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**FEDERAL/PROVINCIAL/TERRITORIAL  
FAMILY LAW COMMITTEE'S REPORT  
AND RECOMMENDATIONS  
ON CHILD SUPPORT**

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**January 1995**

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REPORT AND RECOMMENDATIONS ON  
CHILD SUPPORT**

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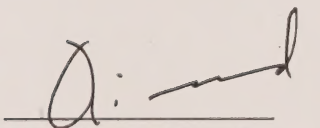
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**FEDERAL/PROVINCIAL/TERRITORIAL  
FAMILY LAW COMMITTEE'S  
REPORT AND RECOMMENDATIONS ON  
CHILD SUPPORT**

This report represents the conclusion of the Federal/Provincial/Territorial Family Law Committee's Child Support Project. For a period of almost four years the project has been the Family Law Committee's most important undertaking. Original research was required for the development of the project. The federal government, the provinces and territories have contributed financially to the costs of this project and its research, as well as contributing the time and expertise of their officials.

This report provides the reader with some background information on the project and proceeds to present the analysis of the policy issues. The examination of each issue is followed by recommendations. Implementation and other related issues are also addressed. The economic research, which includes information on economic models and formulas, the findings on current levels of child support, and the reasons for recommending the preferred formula are presented in Part II and Part III.

It should be noted that the report reflects the views of Family Law Committee members only and not the views of the departments or governments they represent, with the exception of the representative of the province of Québec who does represent the views of her Department.







## **Executive Summary**

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### **Federal/Provincial/Territorial Family Law Committee's Report and Recommendations on Child Support**

The Federal/Provincial/Territorial Family Law Committee has concluded that the application of a child support formula is the best approach to help parents, lawyers and judges set fair and consistent child support awards.

#### **The Proposed Child Support Formula**

The Committee's proposed child support formula is guided by the principle that both parents have a responsibility to meet the financial needs of the children according to their income, and by the understanding that a separated family's costs are greater than those of an intact family. The formula is simple to apply because the amount of the award can be calculated with only the income of the non-custodial parent.

The formula consists of two elements:

- a method of estimating the share of total family expenses represented by the child or the children in the separated household; and,
- a method of sharing these costs between the two parents.

#### ***Estimating the costs of a child***

The formula starts with an equivalence scale developed by Statistics Canada to estimate the proportion of total family expenses that the child or children represent in the separated family. Equivalence scales answer the question "How much does a couple with children need to be as well off as a single person?" The equivalence scales consider that the second person in a household adds 40 percent to the income needs and that every additional person adds another 30 percent compared to the needs of a single person. The formula uses these standards to calculate the total financial need of the two households and estimates what share of that need relates to the child or children.

Each parent is expected to meet the children's financial needs and each parent pays a portion of those expenses. Although the formula appears to be based solely on the non-custodial parent's income, this does not imply that the custodial parent does not contribute to the financial needs of the child. On the contrary - because the child lives with the custodial parent and shares the same living standard as this parent, the custodial parent will continue to pay for the remaining expenses in proportion to his/her income. This is similar to the current system.



### *Sharing these costs between the two parents*

The general approach underlying this formula is to estimate the post-separation costs of the child in cases where the incomes of the non-custodial and custodial parents are equal and to use these amounts as the basis of a fixed percentage approach. The formula is guided by the principles that both parents have a responsibility to meet the financial needs of the children according to their incomes and that all non-custodial parents who earn the same income have the capacity to pay the same award, regardless of the custodial parent's income.

The Revised Fixed Percentage formula has the principal characteristics of a Flat Percentage formula but uses a specific set of underlying principles to arrive at the percentages, which vary depending on income level.

In the construction of the Revised Fixed Percentage formula, the tax consequences were an integral part of the calculations in that the calculations were based on net-of-tax comparisons - that is, on the post-tax costs of children and on post-tax cost shares. The award was, however, calculated in pre-tax dollars - that is, the pre-tax amount that must be transferred to equalize standards of living when both parents earn the same income.

The first step is to calculate awards for cases where the two parents have the same income. The second step is to determine what should happen to the award with changes in the custodial parent's income. With some other formulas the award rises; with others it falls; while with still others it does not change at all. Thus, there is considerable disagreement over how awards should change with the custodial parent's income. The Revised Fixed Percentage formula retains the principle common to all fixed percentage systems: the award does not vary with the income of the custodial parent.

The approach is essentially child-centred: the child benefits from the standard of living of the non-custodial parent before the separation/divorce and should retain this benefit after the separation/divorce.

### **Tax Treatment of Child Support Awards**

The formula equalizes the tax consequences of both parents. The formula alone, however, cannot resolve the tax situation of the minority of custodial parents who earn an income that is similar to or higher than that of their ex-spouses because the formula does not fully compensate the custodial parent for his/her tax consequences in these cases.

### **Determining the Income of the Non-Custodial Parent**

To determine the appropriate award in individual cases, the courts will require information on the total income of the non-custodial parent. The non-custodial parent should therefore be required to provide a complete financial statement of income from all sources for the current year and the previous three years. Non-custodial parents with an income below \$6,744—or the level of a province or territory's social assistance benefit for one adult—would not have to pay

support unless the courts determine that circumstances warrant it. For incomes over \$150,000, the courts would have the discretion to set the amount of child support.

## Applying the Formula

To ensure the most benefit for Canadian children, the formula should apply as a rebuttable presumption. The following circumstances, however, could justify a finding of undue hardship and a departure from the formula by the courts:

- an existing child-support order to pay support for another child.
- having custody of other children
- a high debt load that was reasonably incurred for the benefit of the family or to earn income
- extraordinary costs related to exercising access.

A non-custodial parent should not be able to claim undue hardship if, after applying the formula, the standard of living of his or her household is higher than that of the custodial household.

The courts should also be able to depart from the formula in cases where the child spends at least 40 percent of his or her time with the non-custodial parent, who therefore incurs higher expenses related to the child. In these cases, or when each parent has custody of one or more of the children, the courts would have discretion as to the appropriate amount of child support. The courts can take into account the level of the formula-based award and the fact that shared custody increases the costs of a child. The courts should also take into consideration any differences in living standards between the two households.

If a government decides to set up a system to re-determine child support awards on a regular basis, the Family Law Committee favours re-application of the formula, rather than using a cost-of-living clause, to respond to changes in the means of the non-custodial parent.

The Family Law Committee considers that, where existing awards are lower than the formula amount, parents should be allowed to apply to change them to the formula amount if the resulting change would represent more than 10 percent of the value of the current award. When the existing awards are higher than the formula amount, they should not be reduced unless there has been a significant change of circumstances unrelated to the formula.

It should be noted that the representative of the Ministère de la Justice du Québec has expressed on behalf of her department, a general reserve to the report which is found on page 90.





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## PART I: THE CHILD SUPPORT PROJECT

### BACKGROUND:

The Federal/Provincial/Territorial Family Law Committee (hereafter referred to as the Family Law Committee) has been reviewing the issue of child support since June 1990. The purpose of this project was to study the issue of child support upon family breakdown and consider alternatives to the present system of determining child support.

There is public interest in the broader response to child poverty and this issue will be considered within the federal government's recently established Social Security Review.

However, this project was aimed solely at the issue of private support obligations between parents and related issues. The Family Law Committee did not have the mandate to address the broader issue of public duties to provide for children's financial needs. But, where a family is already living in or near poverty, a child support formula may ensure at least that private parental responsibilities for the child are fairly and justifiably apportioned upon the breakdown of that family.

In June, 1991 the Family Law Committee released a report entitled Child Support: Public Discussion Paper, which launched the public consultation process on child support. This report described the present system of determining child support. Several problems with this system were identified, namely the inconsistency of child support awards, the inadequacy of these awards, and the inequity of the system. The Discussion Paper outlined three options for reform: (1) maintaining the status quo, (2) allowing the courts to consider data on the costs of raising children and (3) adopting child support guidelines. As well, the report discussed a number of issues of substance such as self-support reserves, mandatory minimum awards, reconstituted families, and other similar questions.

In May, 1992 the Family Law Committee released a second Research Report: The Financial Implications of Child Support Guidelines. This report presented the results of the economic research that had been conducted to determine average expenditures on children in Canada. Four economic models based on different assumptions and seven possible formulas or guidelines<sup>1</sup> were outlined. The 1991 Research Report outlined the results which were produced when the four economic models were combined with the seven formulas. The deduction/inclusion tax treatment of child support was also described in this report.

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<sup>1</sup> Throughout this project the Family Law Committee has referred to the method of apportioning the costs of children between parents as "guidelines", but in this report we use the term "formula". The term "guideline" is a misnomer in that the Committee is recommending the adoption of a mathematical formula. It is important to note that the mathematical formula is comprised of two main elements: an estimate of the costs of children and an apportioning principle.

Individuals, groups and organizations were asked to submit their comments respecting both reports in writing. As well, public presentations were made when requested, describing the project and encouraging public input.

The consultation period concluded in December, 1992. Each Family Law Committee member received copies of every submission.

**Consultation:**

Although the consultation brought forth conflicting positions on the different issues, certain trends were clearly identifiable.

- ° In general, the public agreed with the objectives and principles elaborated by the Family Law Committee in the first Discussion Paper.
- ° The respondents concurred with the description of the problems in the area of child support.
- ° With respect to the three options, there was strong public support for the idea of a child support formula.
- ° However, the public proved to be highly sceptical of the economic models under examination, their debatable assumptions and the generally low awards they produced.
- ° A high level of concern was also raised regarding the taxation of child support. Over half of the responses received discussed this issue alone, without addressing any of the other issues raised for consultation.
- ° Finally the consultation revealed general concerns about child poverty, the high costs of separation and divorce and the need for better enforcement of support orders.

There were some exceptions to the broad level of support for establishing a child support formula. Although many responses from Quebec favoured the idea of a child support formula, the "Barreau du Québec", "la Chambre des Notaires du Québec" and a Quebec fathers' rights group preferred the option of providing the courts with data on the costs of raising children, and they disagreed with the notion of limiting judicial discretion.

The Family Law Committee took particular note of the significant amount of support displayed by the legal community for the introduction of a child support formula. It had understood from the experience of other countries that their legal communities were, initially, very reluctant to limit judicial discretion through a child support formula. However, after seeing formulas in application, there is now strong support for them in most countries where they exist.

## **1. OBJECTIVES AND PRINCIPLES:**

At the onset of the Child Support Project, Family Law Committee members formulated a number of objectives and principles regarding child support which could be used in considering various options. These objectives and principles were developed with respect to the current state of the law and in the context of possible future amendments to child support legislation. They are as follows:

### **1.1 OBJECTIVES:**

1. Yield adequate and equitable levels of child support.
2. Produce amounts which are objectively determinable, consistent and predictable.
3. Ensure flexibility to account for a variety of circumstances.
4. Be understandable and inexpensive to administer.

### **1.2 PRINCIPLES:**

- # 1 Parents have legal responsibility for the financial support of their children.
- # 2 Child support legislation should not distinguish between the parents or children on the basis of sex.
- # 3 The determination of child support should be made without regard to the marital status of the parents.
- # 4 Responsibility for the financial support of children should be in proportion to the means of each parent.
- # 5 In determining the means of each parent, his or her minimum needs should be taken into consideration.
- # 6 Levels of child support should be established in relation to parental means.
- # 7 While each child of a parent has an equal right to support, in multiple family situations, the interests of all children should be considered.



- # 8 The development of any new approach to the determination of child support should minimize collateral effects (e.g. disincentive to remarriage, joint or extended custody arrangements and voluntary unemployment or underemployment) to the extent compatible with the obligation to pay child support.

The public consultation revealed a high level of support for the essence of these objectives and principles. Some individuals and organizations did suggest additional ones as well as changes to the wording. The Family Law Committee carefully considered the recommendations of groups and individuals in the development of its recommended approach, including the suggestions regarding the objectives and principles.

A summary of the Family Law Committee's exercise of testing the principles and objectives with its preferred approach is presented in Part III of this report.

The Family Law Committee believes that objectives and principles should also guide the evaluation of its recommended approach to child support, if implemented by governments. If this occurs, the Family Law Committee considers that the principles and objectives originally developed by the Family Law Committee should be further refined to be effective in the context of an evaluation exercise. However, the Family Law Committee's original objectives and principles should be used as the starting point for this exercise, in conjunction with the comments received from the public.

### **RECOMMENDATION:**

- 1.1 **The federal/provincial/territorial Family Law Committee recommends that the principles and objectives as drafted in the Family Law Committee's Child Support: Public Discussion Paper be used as a guide in determining the approach to child support.**

## **2. RECOMMENDED APPROACH TO CHILD SUPPORT:**

This section will address three major issues:

- (1) how should child support be determined,
- (2) jurisdictional difference of formulas, and
- (3) description of the proposed child support formula developed by the Family Law Committee.



## **2.1 HOW SHOULD CHILD SUPPORT BE DETERMINED:**

### **Issue:**

Three different options for addressing the problems of child support were identified in the Discussion Paper:

- (1) maintain the status quo,
- (2) provide the courts with data on the costs of children,
- (3) adopt a child support formula.

### **Consultation:**

Although there were some exceptions, the consultation revealed widespread support for the introduction of a child support formula which would be expected to raise child support levels and bring a sense of fairness by introducing some predictability to child support determinations.

With respect to the Family Law Committee's economic research on expenditures on children, the public generally recognized the need for information on the costs of children but was concerned about the debatable assumptions upon which the economic models presented were based, about the amounts produced by these models and about the very different levels generated.

### **Discussion of issue:**

In determining children's needs for the purposes of establishing child support, the parties, the lawyers and the judges have generally been limiting themselves to the tangible expenditures on children, instead of considering all the elements which constitute the children's needs and which impact on their overall standard of living.

To obtain a child support award at present, custodial parents may be required to provide a budget which lists each expenditure that they incur for the children. At the time of an original support determination, the family is usually going through a period of major transition which make budgeting very difficult, somewhat unrealistic and arguably it may become an inefficient exercise. The fact that the child will ultimately live at the custodial parent's standard of living is generally ignored in this exercise, although the custodial parent's income and capacity to contribute to the child's needs will be considered.

The present system often results in situations where families in similar circumstances end up with significantly different child support awards. This, in turn, generates a sense of distrust for a legal system which appears to be treating children in an inequitable manner.

Furthermore, the current approach ignores the fact that the costs of the children may change significantly as part of a new single parent family because of the loss of economies of scale when one adult leaves the household.

After three years of extensive research and consultations, the Family Law Committee has confirmed that there is much room for improvement. Thus, maintaining the status quo is not in the best interest of Canadian children and is not recommended.

The option of providing data to the courts on the costs of raising children and leaving to them the decision of how to apportion these costs between the two parents is seen as addressing only one part of the problem. The Family Law Committee concludes that major improvements to the actual process for determining child support in Canada are needed and will best be achieved by a more significant change to the current system.

The Family Law Committee believes that the introduction of a child support formula will bring considerable assistance to parties negotiating child support, thus reducing an important element of conflict at the time of the family breakdown. This may also result in lower legal costs for parties and state (legal aid, court costs and maintenance enforcement costs). It should also lessen the emotional trauma and costs to families. A child support formula is an important step to a child centred approach to family law and is clearly in the best interest of Canadian children.

A child support formula will best achieve its goals if supported by strong measures in related areas such as the determination of parental income. Such measures are recommended in this report and together with a child support formula, constitute a new general approach to child support.

## **RECOMMENDATION:**

**2.1 The Family Law Committee believes that a formula is the best method for determining child support.**

## **2.2 JURISDICTIONAL DIFFERENCE OF FORMULAS:**

### **Issue:**

The Family Law Committee considered the possible situation where a province or territory would introduce a formula which generates different levels of awards than would the application of the formula established under the federal Divorce Act.

## **Discussion:**

The major problem of having two different formulas applicable in one province or territory, is that parties may do some "legislation shopping" and opt for a divorce or a separation, (even if that would not have been their original choice) only because of the child support award generated by the particular legislation.

Having two different levels of child support available in the same province or territory could be disturbing because it would suggest different values of children, depending on whether their parents were divorced or simply separated. Arguably, in these cases the best interests of the children would be served by allowing them to benefit from the formula which generates the highest awards.

In studying this issue, the Family Law Committee decided not to make a specific recommendation but rather, to develop various options for governments to consider in their complete examination of child support. These options are:

### **2.2.1 ALL CHILD SUPPORT ORDERS MADE IN THE CONTEXT OF A DIVORCE WOULD BE DECIDED PURSUANT TO A FORMULA CONTAINED IN THE DIVORCE ACT, WHICH FORMULA MAY OR MAY NOT BE ADOPTED WITHIN PROVINCIAL AND TERRITORIAL LEGISLATION.**

Under this option, child support would always be determined according to the parties' choice of legislation.

### **2.2.2 THE DIVORCE ACT WOULD PROVIDE FOR A FORMULA BUT WOULD INDICATE THAT WHERE A PROVINCE HAS ADOPTED A DIFFERENT FORMULA, THE PROVINCIAL ONE WOULD APPLY EVEN IN CASES DECIDED PURSUANT TO THE DIVORCE ACT.**

If provinces legislate to introduce their own child support formula, this option would amount to a withdrawal of the federal role in child support matters.

### **2.2.3 IN CASES OF DIVORCE, WHERE CHILD SUPPORT AWARDS, IF MADE UNDER A PROVINCIAL OR TERRITORIAL FORMULA WOULD RESULT IN HIGHER AWARDS THAN WOULD THE APPLICATION OF THE FEDERAL CHILD SUPPORT FORMULA, THE PROVINCIAL OR TERRITORIAL AMOUNT SHOULD BE APPLIED BY THE COURTS.**

This option would allow a provincial formula to apply to federal child support orders where the provincial formula produces higher levels of child support. This option has the potential of allowing an increased provincial/territorial role in this area while ensuring that the best interests of children are respected. However, it also means that if the Divorce Act formula produces higher awards, that formula would apply, with the result that it creates an incentive to divorce.



**Recommendations:**

**2.2 The Family Law Committee recommends that governments examine the following three options for introducing a child support formula:**

**2.2.1 All child support orders made in the context of a divorce would be decided pursuant to a formula contained in the Divorce Act, which formula may or may not be adopted within provincial and territorial legislation.**

**2.2.2 The Divorce Act would provide for a formula but would indicate that where a province has adopted a different formula, the provincial one would apply even in cases decided pursuant to the Divorce Act.**

**2.2.3 In cases of divorce, where child support awards, if made under provincial or territorial legislation would result in higher awards than would the application of the federal child support formula, the provincial or territorial amount should be applied by the courts.**

**2.3. DESCRIPTION OF THE FORMULA DEVELOPED BY THE FAMILY LAW COMMITTEE:**

This section will describe the different elements which comprise the proposed child support formula :

- (1) Expenditures on children
- (2) Method for apportioning these expenditures between the two parents
- (3) Formula and Taxation
- (4) Basic personal amount
- (5) Marginal tax rate
- (6) Adjustment for the low income category
- (7) Presentation of the formula for application by the public.

**2.3.1 EXPENDITURES ON CHILDREN:**

In its 1992 Research Report on the Financial Implications of Child Support Guidelines, the Family Law Committee presented four economic models which estimated expenditures on children in Canada. The economic models examined were: the Consumption, the Adult Goods, the Extended Engel, and the Blackorby-Donaldson.

The results of the consultation showed little support for the proposed methods of determining expenditures on children. Consequently, the Family Law Committee brought

together various economists and experts in this area to discuss other possible options for determining expenditures on children.

Following the advice of the experts, the Family Law Committee chose to use a method identified by Statistics Canada usually referred to as the 40/30 Equivalence Scale.

An equivalence scale can be derived from any estimate of expenditures on children. Equivalence scales are used to compare standards of living across households of different sizes and structures. An equivalence scale basically responds to the question "How much does a family with children need to be as well off as a couple without children?". A family with children may have a higher income than a childless couple but its needs are also greater. The difference in income when the standards of living of families with and without children are equivalent can be expressed as a ratio. The series of all ratios produced across all types of families at different income levels can be translated into an equivalence scale. These scales are usually expressed in "adult equivalent units" with a single individual having the reference value of 1.0 and with a couple or a couple with children having reference values greater than 1.0.

The 40/30 equivalence scale<sup>2</sup> is proposed in the absence of a definitive and perfect method for determining expenditures on children which is totally reliable and without criticism. Therefore, a reasonable set of round numbers derived from empirical research and a public consultation process could be used and produce reasonable results. Under this equivalence scale, a couple is presumed to need 40 percent more money to maintain the same standard of living as an individual living alone (the 40 in the 40/30), while a first child adds another 30 percent to the family's costs (the 30 in the 40/30). In other words, a couple with a child requires 170% of the income of a person living alone to be as well off. The child's costs in a two-parent family would be 30 divided by 170 or 17.6% of the family's total gross income.<sup>3</sup> These rates are the same for all income levels. (See next page).

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<sup>2</sup> A detailed explanation of equivalence scales and in particular of the 40/30 Equivalence Scale is presented in Part II of this report and in the Department of Justice's Overview of the Research Program.

<sup>3</sup> A child in a separated family requires 28.6% ( $.4 \div 1.4$ ) of the gross income of the first adult to be as well off as that adult. Similarly, two children living in a separated family would require 41.1% of the gross income of the adult to be as well off as that adult.



#### EXAMPLE OF USING THE 40/30 SCALE

##### ASSUMPTIONS:

Single Person has reference level of 100%

Couple is presumed to need 40 percent more money to maintain the same standard of living as a single person. Couple therefore requires 140% of the income of a single person to be as well off as that single person.

First child adds another 30 percent to the family's income requirements. A family with one child therefore requires 170 percent of the income of a single person to be as well off as that single person.

Thus the child's income needs are judged to be 30/170 of the family's total income.

##### EXAMPLE:

Assume income of single person is \$50,000

Couple requires \$70,000 to be as well off as single person. (\$50,000 plus 40% of \$50,000)

Couple plus child requires \$85,000 to be as well off as single person. (\$50,000 plus 70% of \$50,000)

Child's income requirements are \$15,000. (17.65% of \$85,000)

This method of determining expenditures on children was found to produce higher estimates of expenditures on children than most other methods considered, while also eliminating the false idea that complete precision can be brought to this area. However, because this equivalence scale is an estimate of expenditures on children it is assumed to include all expenditures relating to a child and to apply to children of all ages. In using this equivalence scale, it would be inappropriate to add on, as a separate item, the specific amount of day care costs being incurred by the parents, as the Family Law Committee had done in its 1992 Research Report.

The economic models presented in the Family Law Committee's 1992 Research Report specifically excluded child care costs. In the scenarios presented, a base award was calculated and costs for child care were added to every award. At the onset of this project and in particular during the drafting of the Discussion Paper and Research Report, the Family Law Committee preferred the approach of keeping child care costs separate. The Family Law Committee's preference was noted in its first two reports.

Despite the Family Law Committee's original preference for separate treatment of child care costs, any final decision on the issue was to be guided by the results of the research on expenditures on children. The economic models which allowed us to treat child care costs separately have not been retained for reasons discussed above, as well as in Part II (Results of the Research) and in the Department of Justice's final Research Report on child support. This research now suggests that the 40/30 scale deals appropriately with the child care costs issue.

The Family Law Committee recognizes that in the context of the child care costs, there are both advantages and disadvantages to choosing the 40/30 scale:

Advantages:

- The use of an equivalence scale which includes child care costs provides for more simplicity in the determination of child support.
- As children grow older, child care costs would presumably decrease. However, other costs such as clothing would presumably increase as children become teenagers. Because the costs of children are averaged out in the equivalence scale these increases or decreases are not reflected. (This is because the amount is based on the needs of a second person in a household, whether that person is a child, a teenager or an adult). Therefore, an important advantage of this approach is that it balances the likely decreases and increases in the costs of the child.
- The approach limits the need for costly variation applications as the costs of the child vary during the life of the order.

Disadvantages:

- It may not fully compensate for the actual child care costs when the custodial parent is actually incurring these expenses. This may serve as a disincentive for custodial parents to return to full time employment.
- The formula includes a child care amount even where no child care costs are being incurred.

The Family Law Committee feels that the proposed equivalence scale, which includes child care costs, is preferable to a formula that would allow the separate calculation of child care costs. It is simpler and provides for greater certainty of the amount of the award over the years, which facilitates financial planning for custodial parents. As well, this approach considerably limits the need for the variation of support awards based upon changing needs of children, thus saving significant legal fees for both parties.

The Family Law Committee has used the 40/30 equivalence scale to determine the costs of children in the post-family breakdown context by allowing the first child to count as the second individual in the household and not the third as he or she was in the pre-separation household. This is in the best interest of children since it represents the context in which the child now lives.

### **2.3.2 METHOD FOR APPORTIONING EXPENDITURES ON CHILDREN:**

In its 1992 Research Report, the Family Law Committee had developed seven possible apportioning methods: Income Shares, Income Shares with Reserve, Flat Percentage, Flat Percentage with Reserve, Australian formula, Delaware-Melson, and Income Equalization.

Following the conclusion of the consultation period, some of the original formulas used to apportion the expenditures on children were modified and improved considerably. As well, new formulas were developed. These formulas all apportion the costs of the children between the two parents, but do so in various manners. Some are more complex than others to apply and all generate different results.<sup>4</sup>

The Family Law Committee used the 40/30 equivalence scale in conjunction with various methods of apportioning the costs of children between parents. The Family Law Committee then identified a preferred approach among those it had considered. Family Law Committee members supported the premise that where both parents had similar incomes, every family member in both households should enjoy a similar standard of living. The Revised Fixed Percentage formula starts from this concept.

Where both parents have similar incomes, the Revised Fixed Percentage formula basically determines the amount of money which should be transferred from the non-custodial parent to the custodial parent to ensure that every family member enjoys a similar standard of living.<sup>5</sup> In doing this exercise, all taxes<sup>6</sup>, government subsidies, credits and deductions are considered.

The amount determined at a given income level is then used as the amount to be paid in child support by all non-custodial parents earning the same income, regardless of the custodial parent's own income level. This is theoretically sound because it represents a reasonable estimate of what a non-custodial parent can be expected to pay at that income level. As well, since the formula assumes an income level for custodial parents and recognizes that the children will live at the same standard of living as custodial parents, there is a presumption that custodial parents will have to contribute in proportion to their means, in order to meet the children's needs.

The child's standard of living is, in reality, not separable from the standard of living of the custodial parent. Accordingly, where the custodial parent has a lower income than the non-custodial parent, the child's standard of living will be tied directly to the standard of living of the lower income custodial parent. The formula minimizes the effects of the decline in the child's standard of living when the child is living with the lower income parent by calculating the amount of child support as if both parents had the same income as the non-custodial parent.

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<sup>4</sup> A detailed discussion of the various apportioning approaches developed by the Committee is presented in Part II of this report, as well as in the Department of Justice's Overview of the Research Program.

<sup>5</sup> This is accomplished by using the 40/30 equivalence scale in the income to needs ratio and by considering all tax implications. This is also further explained in Part II of this report and in the Department of Justice's Overview of the Research Program.

<sup>6</sup> Given the importance of taxes within this formula, it may not be applicable to those aboriginal people whose income is free of tax.



Because the amount of the award is based on an assumption of equal incomes, the award would, in most cases, be higher than it would have been if it were based on a proportional division of the total of the non-custodial parent's income and the custodial parent's lower income.<sup>7</sup> The formula does not equalize the standards of living of the two households but it does provide some cushion against the decline in the child's standard of living that results from actually sharing in the standard of living of a lower income custodial parent.

The impact of the formula may redress somewhat the great disparity in standards of living between the custodial and non-custodial households after family breakdown.<sup>8</sup>

### 2.3.3 FORMULA AND TAXATION:

The Revised Fixed Percentage formula was originally developed in the deduction/inclusion tax system and tried to resolve most of the criticisms with this tax treatment. The tax implications are, therefore, included in the amount of child support recommended by the formula. A second table would be prepared to apprise custodial parents of the tax liability on these awards. (The tax liability would vary depending on their income level.) Custodial parents would continue to include the award within their income and non-custodial parents would continue to receive the deduction at year end. However, the child support formula would have already passed on the benefit to the custodial parent through the child support award.

For approximately two-thirds of custodial parents whose ex-spouse earn a higher income than they do, the child support award will always fully compensate them for having to include the award within their income. However, for the one-third of custodial parents who either earn a similar or higher income than their ex-spouse, and who are penalized by the current tax treatment, the formula cannot resolve their situation.

It should also be noted that the Revised Fixed Percentage formula was developed before the Federal Court of Appeal decision in Thibaudeau v. the Queen. Following the Thibaudeau decision, the Family Law Committee developed the formula in a no-deduction / no-inclusion and no-credit context and the results are presented in a report of the Department of Justice's, *An Overview of the Research Program to develop a Canadian Child Support Formula* (hereafter referred to as *Overview of the Research Program*)<sup>9</sup>.

In the event of a change of the tax system to a no/deduction-no/inclusion, the Revised Fixed Percentage formula could also be considered as an option, subject to the results of

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<sup>7</sup> The reader should refer to Part II of this report and to the Department of Justice's Overview of the Research Program for further explanations.

<sup>8</sup> This disparity has been identified in the study of the current awards data base as shown in the Department of Justice's Overview of the Research Program, as well as by other studies such as: Ross Finnie, "Women, Men and the Economic Consequences of Divorce: Evidence from Canadian Longitudinal Data", Canadian Review of Sociology and Anthropology, Vol. XXX, No. 2, pp, 205-241, May 1993.

<sup>9</sup> This Report is available through the Research Section of the Federal Department of Justice.



further research that compares the results of other formulas in a no-deduction/no-inclusion/no-credit context. This research is currently underway but was not completed in time to be included in this report.

The Family Law Committee supports ongoing consultation among jurisdictions while the selection and implementation of federal or provincial formulas are being considered. This will be necessary, particularly, if the federal government were to select a formula that is different from the Revised Fixed Percentage-Low Income Adjustment in the deduction/inclusion tax treatment.

### **2.3.4 BASIC PERSONAL AMOUNT:**

Currently, parents are usually allowed by the courts to keep a certain amount to cover basic needs before being required to pay for their children. The difficulty is in determining what a reasonable amount may be, before a parent's income can be used to pay child support.

The idea of allowing for a basic personal amount is very appealing from a fairness and policy perspective. The equity of such a reserve makes it an attractive feature within a child support formula.

Although the proposed formula is based on a percentage of income that will usually leave non-custodial parents with a significant portion of their income after paying child support, equity and enforcement considerations suggest that it may be appropriate to establish a base amount under which non-custodial parents would generally not be required to pay child support. The formula would, therefore, start applying only after this certain threshold is reached. However, the courts could use their judicial discretion to make child support awards under that level if they felt it was appropriate.

As indicated above, it is very difficult to determine the appropriate level of the basic personal amount. It could be argued that the amount should vary according to income, or that it should be set at the level of low income cut-offs, or at social assistance levels or at any arbitrary figure. A basic minimum amount established at the level of low income cut offs (approximately \$14,000 a year) could result in situations where parents who had contributed to their children's needs before separation would be relieved of this obligation upon family breakdown. This was not seen as being in the best interest of children.

The Family Law Committee tested different amounts and came to the following conclusions. Either the basic personal exemption as set out in the Income Tax Act or a provincial/territorial social assistance level for one adult would be appropriate. Provinces/territories would have the option to choose whichever one they wish.

The basic personal exemption of \$6,744, set out in the Income Tax Act, is reasonably low and is used and recognized on a national basis (although an additional cost of living component is added in the Territories). Dependent upon the province/territory, the social assistance level may be either higher or lower than the basic personal exemption. A province/territory may prefer to harmonize the exemption in the child support formula with the social assistance level since one of the assumptions of social assistance is that the adult would require that entire amount to cover his or her most basic minimal needs.

### **2.3.5 MARGINAL TAX RATE:**

As part of the development of the formula, it was recognized that an important issue to consider is the effective marginal tax rate (the combination of taxes and the child support award payable) faced by the non-custodial parent. This is particularly important when the person is earning just over the minimum basic personal amount, in that an increase in child support could result in the non-custodial parent facing a 100% tax rate. The issue of marginal tax rates is resolved by adding a rule to the calculation of the awards that results in the effective marginal tax rate not exceeding a specific percentage. (See Part II of this report and the Department of Justice's Overview of the Research Program for more details).

### **2.3.6 LOW INCOME ADJUSTMENTS:**

The formula produced significant increases in levels of child support particularly where non-custodial parents earned over \$30,000 a year. According to the Family Law Committee's analysis of current awards, it is in this income group that children suffer the most from a significant discrepancy in their standards of living following the family breakdown, as well as in comparison to that of their non-custodial parent.

However, where both parent's incomes were lower than \$20,000 a year, the application of the formula would produce a decrease in current levels of child support. In this income category, the government offers significant subsidies to lower income custodial parents which, in fact, leave them at a higher standard of living than non-custodial parents earning similar incomes. It should be noted, however, that at this income level, although the custodial parent's standard of living may be higher than that of the non-custodial parent, everyone is living in poverty. By equalizing the two parents' standards of living in this category a portion of the government subsidies to custodial parents would in fact be transferred to non-custodial parents.

The Family Law Committee asked the researchers to develop a variation of the formula which would avoid, or minimize, decreases in current awards for families where each parent is earning \$20,000 a year and less. The method for doing this is explained in Part II of this report and the Department of Justice's Overview of the Research Program.

If subsequent research shows that in the low income range, current awards are not being paid because they are in fact too high, then the low income adjustment might not be needed. Likewise, it is important to know that for payers, current awards are not a significant disincentive to work. There must be a sense of confidence that increasing awards against non-custodial parents will not make them choose to become dependent on social assistance.

### 2.3.7 PRESENTATION OF THE FORMULA:

A table would be used to determine the appropriate amount in child support to be paid at a given income level<sup>10</sup>. The following is an example of how the formula would be presented. The parties could refer to the table to determine the appropriate amount which would be required by the formula. The attached table presents the amounts to be paid for one child according to the Revised Fixed Percentage formula with the Low income adjustment. Other tables are presented in Appendix B for 2 and 3 children.

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<sup>10</sup> The child support amount in this table includes tax implications. A separate table would be provided to determine how much tax the custodial parent would be expected to pay on this award. In the event of a change to the income tax treatment of child support, the formula without tax could apply.



**Child Support Award Amounts Based on  
Non-custodial Parent's Annual Gross Income Levels**

Province: ONTARIO  
 No. of children: One  
 Formula: Revised Fixed Percentage - Low Income Adjusted  
 Tax Treatment: Current

Annual Gross Income		Annual Award					
from	to						
0	6744	the award is	0,00				
6745	6999	the award is	0,00	plus	58,7 %	of income over	6745
7000	7999	the award is	150,21	plus	58,4 %	of income over	7000
8000	8999	the award is	734,44	plus	39,3 %	of income over	8000
9000	9999	the award is	1127,50	plus	10,0 %	of income over	9000
10000	10999	the award is	1227,50	plus	10,0 %	of income over	10000
11000	11999	the award is	1327,50	plus	10,0 %	of income over	11000
12000	12999	the award is	1427,50	plus	10,0 %	of income over	12000
13000	13999	the award is	1527,50	plus	10,0 %	of income over	13000
14000	14999	the award is	1627,50	plus	10,0 %	of income over	14000
15000	15999	the award is	1727,50	plus	10,0 %	of income over	15000
16000	16999	the award is	1827,50	plus	10,0 %	of income over	16000
17000	17999	the award is	1927,50	plus	10,0 %	of income over	17000
18000	18999	the award is	2027,50	plus	10,0 %	of income over	18000
19000	19999	the award is	2127,50	plus	10,0 %	of income over	19000
20000	20999	the award is	2227,50	plus	15,5 %	of income over	20000
21000	21999	the award is	2382,50	plus	16,5 %	of income over	21000
22000	22999	the award is	2547,50	plus	20,0 %	of income over	22000
23000	23999	the award is	2747,50	plus	22,5 %	of income over	23000
24000	24999	the award is	2972,50	plus	23,0 %	of income over	24000
25000	25999	the award is	3202,50	plus	25,5 %	of income over	25000
26000	26999	the award is	3457,50	plus	35,0 %	of income over	26000
27000	27999	the award is	3807,50	plus	34,5 %	of income over	27000
28000	28999	the award is	4152,50	plus	35,0 %	of income over	28000
29000	29999	the award is	4502,50	plus	29,0 %	of income over	29000
30000	30999	the award is	4792,50	plus	26,0 %	of income over	30000
31000	31999	the award is	5052,50	plus	26,0 %	of income over	31000
32000	32999	the award is	5312,50	plus	22,5 %	of income over	32000
33000	33999	the award is	5537,50	plus	22,0 %	of income over	33000
34000	34999	the award is	5757,50	plus	22,5 %	of income over	34000
35000	35999	the award is	5982,50	plus	19,0 %	of income over	35000
36000	36999	the award is	6172,50	plus	11,0 %	of income over	36000
37000	37999	the award is	6282,50	plus	17,0 %	of income over	37000
38000	38999	the award is	6452,50	plus	16,5 %	of income over	38000
39000	39999	the award is	6617,50	plus	16,5 %	of income over	39000
40000	40999	the award is	6782,50	plus	17,0 %	of income over	40000
41000	41999	the award is	6952,50	plus	16,5 %	of income over	41000
42000	42999	the award is	7117,50	plus	16,5 %	of income over	42000
43000	43999	the award is	7282,50	plus	17,0 %	of income over	43000
44000	44999	the award is	7452,50	plus	16,5 %	of income over	44000
45000	45999	the award is	7617,50	plus	16,5 %	of income over	45000
46000	46999	the award is	7782,50	plus	17,0 %	of income over	46000
47000	47999	the award is	7952,50	plus	16,5 %	of income over	47000
48000	48999	the award is	8117,50	plus	16,5 %	of income over	48000
49000	49999	the award is	8282,50	plus	17,5 %	of income over	49000
50000	50999	the award is	8457,50	plus	20,5 %	of income over	50000



Ontario - One Child, Revised Fixed Percentage-Low Income Adjusted,  
Current Tax Treatment (con't)

Annual Gross Income		Annual Award					
from	to						
51000	51999	the award is	8662,50	plus	22,0 %	of income over	51000
52000	52999	the award is	8882,50	plus	21,5 %	of income over	52000
53000	53999	the award is	9097,50	plus	22,0 %	of income over	53000
54000	54999	the award is	9317,50	plus	21,5 %	of income over	54000
55000	55999	the award is	9532,50	plus	22,0 %	of income over	55000
56000	56999	the award is	9752,50	plus	22,5 %	of income over	56000
57000	57999	the award is	9977,50	plus	23,5 %	of income over	57000
58000	58999	the award is	10212,50	plus	23,0 %	of income over	58000
59000	59999	the award is	10442,50	plus	23,0 %	of income over	59000
60000	60999	the award is	10672,50	plus	23,0 %	of income over	60000
61000	61999	the award is	10902,50	plus	23,0 %	of income over	61000
62000	62999	the award is	11132,50	plus	23,0 %	of income over	62000
63000	63999	the award is	11362,50	plus	23,0 %	of income over	63000
64000	64999	the award is	11592,50	plus	23,5 %	of income over	64000
65000	65999	the award is	11827,50	plus	23,0 %	of income over	65000
66000	66999	the award is	12057,50	plus	22,5 %	of income over	66000
67000	67999	the award is	12282,50	plus	22,5 %	of income over	67000
68000	68999	the award is	12507,50	plus	22,0 %	of income over	68000
69000	69999	the award is	12727,50	plus	22,5 %	of income over	69000
70000	70999	the award is	12952,50	plus	22,0 %	of income over	70000
71000	71999	the award is	13172,50	plus	22,5 %	of income over	71000
72000	72999	the award is	13397,50	plus	21,5 %	of income over	72000
73000	73999	the award is	13612,50	plus	19,0 %	of income over	73000
74000	74999	the award is	13802,50	plus	19,0 %	of income over	74000
75000	75999	the award is	13992,50	plus	19,0 %	of income over	75000
76000	76999	the award is	14182,50	plus	19,0 %	of income over	76000
77000	77999	the award is	14372,50	plus	19,0 %	of income over	77000
78000	78999	the award is	14562,50	plus	17,5 %	of income over	78000
79000	79999	the award is	14737,50	plus	18,0 %	of income over	79000
80000	80999	the award is	14917,50	plus	17,5 %	of income over	80000
81000	81999	the award is	15092,50	plus	18,0 %	of income over	81000
82000	82999	the award is	15272,50	plus	17,5 %	of income over	82000
83000	83999	the award is	15447,50	plus	18,0 %	of income over	83000
84000	84999	the award is	15627,50	plus	17,5 %	of income over	84000
85000	85999	the award is	15802,50	plus	18,0 %	of income over	85000
86000	86999	the award is	15982,50	plus	17,5 %	of income over	86000
87000	87999	the award is	16157,50	plus	17,5 %	of income over	87000
88000	88999	the award is	16332,50	plus	18,0 %	of income over	88000
89000	89999	the award is	16512,50	plus	17,5 %	of income over	89000
90000	90999	the award is	16687,50	plus	18,0 %	of income over	90000
91000	91999	the award is	16867,50	plus	17,5 %	of income over	91000
92000	92999	the award is	17042,50	plus	18,0 %	of income over	92000
93000	93999	the award is	17222,50	plus	17,5 %	of income over	93000
94000	94999	the award is	17397,50	plus	18,0 %	of income over	94000
95000	95999	the award is	17577,50	plus	17,5 %	of income over	95000
96000	96999	the award is	17752,50	plus	17,5 %	of income over	96000
97000	97999	the award is	17927,50	plus	18,0 %	of income over	97000
98000	98999	the award is	18107,50	plus	17,5 %	of income over	98000
99000	99999	the award is	18282,50	plus	18,0 %	of income over	99000

**Ontario - One Child, Revised Fixed Percentage-Low Income Adjusted,  
Current Tax Treatment (con't)**

Annual Gross Income		Annual Award					
from	to						
10000	101000	the award is	18462,50	plus	17,5 %	of income over	100000
101000	102000	the award is	18637,50	plus	18 %	of income over	101000
102000	103000	the award is	18817,50	plus	17 %	of income over	102000
103000	104000	the award is	18987,50	plus	16,5 %	of income over	103000
104000	105000	the award is	19152,50	plus	16,5 %	of income over	104000
105000	106000	the award is	19317,50	plus	17 %	of income over	105000
106000	107000	the award is	19487,50	plus	16,5 %	of income over	106000
107000	108000	the award is	19652,50	plus	16,5 %	of income over	107000
108000	109000	the award is	19817,50	plus	17 %	of income over	108000
109000	110000	the award is	19987,50	plus	16,5 %	of income over	109000
110000	111000	the award is	20152,50	plus	16,5 %	of income over	110000
111000	112000	the award is	20317,50	plus	17 %	of income over	111000
112000	113000	the award is	20487,50	plus	16,5 %	of income over	112000
113000	114000	the award is	20652,50	plus	16,5 %	of income over	113000
114000	115000	the award is	20817,50	plus	17 %	of income over	114000
115000	116000	the award is	20987,50	plus	16,5 %	of income over	115000
116000	117000	the award is	21152,50	plus	16,5 %	of income over	116000
117000	118000	the award is	21317,50	plus	17 %	of income over	117000
118000	119000	the award is	21487,50	plus	16,5 %	of income over	118000
119000	120000	the award is	21652,50	plus	16,5 %	of income over	119000
120000	121000	the award is	21817,50	plus	17 %	of income over	120000
121000	122000	the award is	21987,50	plus	16,5 %	of income over	121000
122000	123000	the award is	22152,50	plus	16,5 %	of income over	122000
123000	124000	the award is	22317,50	plus	17 %	of income over	123000
124000	125000	the award is	22487,50	plus	16,5 %	of income over	124000
125000	126000	the award is	22652,50	plus	16,5 %	of income over	125000
126000	127000	the award is	22817,50	plus	17 %	of income over	126000
127000	128000	the award is	22987,50	plus	16,5 %	of income over	127000
128000	129000	the award is	23152,50	plus	16,5 %	of income over	128000
129000	130000	the award is	23317,50	plus	17 %	of income over	129000
130000	131000	the award is	23487,50	plus	16,5 %	of income over	130000
131000	132000	the award is	23652,50	plus	16,5 %	of income over	131000
132000	133000	the award is	23817,50	plus	17 %	of income over	132000
133000	134000	the award is	23987,50	plus	16,5 %	of income over	133000
134000	135000	the award is	24152,50	plus	16,5 %	of income over	134000
135000	136000	the award is	24317,50	plus	17 %	of income over	135000
136000	137000	the award is	24487,50	plus	16,5 %	of income over	136000
137000	138000	the award is	24652,50	plus	16,5 %	of income over	137000
138000	139000	the award is	24817,50	plus	17 %	of income over	138000
139000	140000	the award is	24987,50	plus	16,5 %	of income over	139000
140000	141000	the award is	25152,50	plus	16,5 %	of income over	140000
141000	142000	the award is	25317,50	plus	17 %	of income over	141000
142000	143000	the award is	25487,50	plus	16,5 %	of income over	142000
143000	144000	the award is	25652,50	plus	16,5 %	of income over	143000
144000	145000	the award is	25817,50	plus	17 %	of income over	144000
145000	146000	the award is	25987,50	plus	16,5 %	of income over	145000
146000	147000	the award is	26152,50	plus	16,5 %	of income over	146000
147000	148000	the award is	26317,50	plus	17 %	of income over	147000
148000	149000	the award is	26487,50	plus	16,5 %	of income over	148000
149000	149999	the award is	26652,50	plus	16,5 %	of income over	149000



**Recommendation:**

- 2.3 The Family Law Committee recommends that jurisdictions consider implementing the Revised Fixed Percentage formula with the low income adjustment developed by the Family Law Committee and which is described in this report and in the Department of Justice's Overview of the Research Program.**

**The Family Law Committee recommends that in the event of a change to the tax system to a no deduction/no inclusion, the Revised Fixed Percentage - low income adjusted formula be considered as an option (subject to the results of the current research comparing the results of other formulas in a no-deduction/no-inclusion/no-credit tax system).**

**3. RIGHT TO SUPPORT:**

**Issue:**

Currently, the Divorce Act establishes an unqualified right to support for all children under 16 and older children who remain dependent on the custodial parent by reason of illness, disability or "other cause" which is usually taken to include continuing education, up to a post-secondary degree or equivalent.

Provincial and territorial legislation have similar provisions for the support of children following breakdown of a married or common-law relationship as well as for cases where a child is born outside of such a union. Similar provisions with regards to older dependent children are also found in provincial and territorial legislation although the age of majority differs among jurisdictions. There are three issues to consider with regard to the right to support:

- (1) The extent of the right to support
- (2) The adequacy of age of 16 in the Divorce Act
- (3) Treatment of older dependent children with regard to support

**Consultation:**

In general, the results of the consultation supported the view that all children should receive support while they are dependent notwithstanding the marital status of their parents. The consultation favoured raising the presumptive age to 18. With respect to the issue of older dependent children, the respondents presented different positions on this issue and how support should be determined at that stage. However, in general it was recognized that children should continue to receive parental support during their post-secondary studies.

## **Discussion:**

### **3.1 THE EXTENT OF THE RIGHT TO SUPPORT**

All parents have a legal obligation to pay child support and to provide for the needs of their children, notwithstanding the status of the relationship between the two parents. Child support awards could result from the separation of a married or unmarried couple, from a divorce or from a paternity action. The high level of default, the low levels of child support and the litigation surrounding this issue indicate that, to some extent, there may be a disturbing perception that payment of child support is not as important as the obligation to honour other personal debts.

Child support should be a primary obligation of a parent. It may be that non-custodial parents feel that they have a certain discretion as to whether or not they will make the payment partially or completely, or on time. Some may not even recognize that child support is paid for the benefit of children and mistakenly perceive that this amount is used by custodial parents for their own benefit.

It is imperative that the legal obligation to pay child support be given the importance it deserves.

### **3.2 ADEQUACY OF AGE 16 IN THE DIVORCE ACT**

Children do not generally finish their high school education until they reach the age of 18. It is, therefore, necessary and quite reasonable that children be assured of receiving parental support through their secondary studies.

While it is noted that the age of majority varies from province to province, it was felt that clarification could be made to legislation to ensure that children receive a child support award based upon the formula all through their secondary studies. Using the "age of majority" criteria within the Divorce Act should be explored to ensure that children be allowed the support level suggested by the formula for the duration of a minimum education degree. This could also reduce the risk of discrepancy between the provincial and territorial legislation and the Divorce Act.

Where a child has withdrawn from parental control and ceases to be dependent on the custodial parent before reaching the age of majority or completing their secondary studies, provincial and territorial laws of entitlement and dependency of each jurisdiction should apply.



### **3.3 TREATMENT OF OLDER DEPENDENT CHILDREN WITH REGARD TO SUPPORT**

With respect to the question of older dependent children, the Family Law Committee agreed that generally older children should have the right to support during their post-secondary studies. The issue was whether it would be appropriate to address, within the recommended policy, the amount and duration of the child support obligation after the age of majority.

On this issue, it was noted that while a child support formula could be used by judges to assist them in making a support order for older children, the formula may not be appropriate for these situations. The range of circumstances may vary dramatically such as university students who are working part-time and paying for a part of their studies, or students taking part in a special program or students having particular difficulties which do not allow them to work part-time. Also, university students living outside their home town could require additional subsistence costs. Their parents may have the means to provide additional assistance and student loans may not be available given the level of parental income. These are considerations that should be dealt with on a case by case basis.

#### **Recommendations:**

- 3.1. The Family Law Committee recommends that payment of child support should be a primary obligation of a parent.**
- 3.2 The Family Law Committee recommends that a child support formula be applicable in all cases where a parent has a legal obligation to support a child, including upon breakdown of a married or common-law relationship or where the child is born outside of such a union.**
- 3.3 The Family Law Committee recommends that parents have an obligation to support their children until the age of majority, and beyond the age of majority if there are reasonable circumstances justifying the dependency (such as educational or health needs).**

**Where the child is a minor, the formula should apply.**

**An order for support made in accordance with the formula, while a child was a minor, should remain in effect after the child attains the age of majority until or unless varied by a court order or agreement.**

**Where the child is over the age of majority at the time of the initial application or a variation application, the amount of support should be determined by the court having regard to the needs of the child and the means of the parent. The formula can be used to assist the court in making this determination if appropriate.**

## **4. PARENTAL MEANS:**

### **Issue:**

The determination of parental means is very important in determining child support under the current system. However, parental means acquires particular importance in the context of a child support formula as it may be the sole criterion to consider for the determination of child support.

In current legislation, there is somewhat of a lack of direction as to what should be considered in determining the means of parents and this may result in situations where non-custodial parents are allowed to maintain a specific standard of living before being required to pay child support.

In studying the issue of parental means in the context of a child support formula, the following three points will be addressed:

- General definition of income
- Disclosure and assessment of income
- Attribution of income.

### **Consultation:**

In its first Discussion Paper, the Family Law Committee presented an analysis of the situation with respect to parental means and made specific suggestions as to how to address this issue. The majority of respondents to the consultation agreed with the description of the problems and the recommendations, which were very similar to those presented in this report.

## **4.1 GENERAL DEFINITION OF INCOME**

### **Issue:**

The determination of the non-custodial parent's income is the most important element in applying the proposed child support formula. It is thus necessary to clarify what should be considered in determining the level of income.

### **Discussion:**

The Family Law Committee has already noted a concern that there may be a lack of importance attributed to the obligation to pay child support. Similarly, the Family Law Committee is concerned that upon determining child support, the children's needs may not always be given the importance they deserve in the exercise of balancing these needs with the non-custodial parent's means and other personal obligations.

The best interest of the children being at the centre of this project, it is necessary to bring precision to the determination of parental means and ensure that children are allowed to live at an appropriate standard of living in relation to their parents' true means. To ensure that this occurs, it is necessary to maximize the non-custodial parent's income before applying a child support formula. This will assist in raising the levels of child support and may have the secondary impact of showing the importance which ought to be given to the needs of children.

Limiting the definition of income to the parent's wages or earned income may not necessarily reflect a parent's true means. The definition of income should, therefore, be broad enough to include all types of revenues such as: earned income, wages, commissions, employment or ownership benefits, income producing assets, interest on capital, and payments in lieu of income, such as unemployment insurance, social assistance, disability payments, previous spousal support payments. Finally, it should be noted that the child support formula developed by the Family Law Committee requires that gross, and not net, personal income be considered.

One exception should be made to the principle of including within available income all types of revenues and that is where a child support payment is received for a child other than the one, subject of the current support determination. That money is in fact targeted for the other child and should not, in theory, be considered as available income for the new child support award.

### **Recommendations:**

- 4.1.1 The Family Law Committee suggests that a full and accurate assessment of parental income is essential for the proper application of a child support formula.**
- 4.1.2 The Family Law Committee recommends that in determining income, all sources, or potential sources, of gross income should be considered by the courts. These might include, but not be limited to the following: earned income, wages, commissions, employment or ownership benefits, income producing assets, interest on capital, and payments in lieu of income such as unemployment insurance, social assistance, disability payments, and previous spousal support payments.**
- 4.1.3 The Family Law Committee recommends that in determining the income of a parent, the courts should not consider child support payments received by that parent for a child other than the one who is the subject of the current support determination.**



## **4.2 DISCLOSURE AND ASSESSMENT OF INCOME:**

### **Issue:**

Disclosure of parental financial means is a fundamental requirement in the determination of child support under the current system. However, its importance is intensified in the context of a child support formula. After the disclosure is made, it will then be necessary for the parties, the lawyers and judges to convert this financial information into a reliable assessment of income, to which the formula would be applied.

### **Consultation:**

The consultation confirmed the importance the Family Law Committee attributed to this issue and the difficulties identified.

### **Discussion:**

There are practical problems associated with determining parental means. In the development of this project, the Family Law Committee created a data base of current levels of child support. (For a description of the data base, see Part 2 "Results of Research at p. 53). In doing so, the Family Law Committee experienced major problems in obtaining financial information on both parents from the court files, although it is a legal requirement that they disclose it. In many cases, it would appear that parties do not file their financial statements unless absolutely required to. This does not mean, however, that the income information has not been provided to the other parent's lawyer, but simply that there is no record in the court file regarding the parents' actual income level, at the time of the support determination. It was mostly in cases where the parties could not settle out of court but were required to go to trial, that they would provide the income information.

Our analysis of this Current Awards Data Base demonstrates that children whose non-custodial parents earn over \$30,000 a year stand to suffer the greatest reductions in standard of living following family breakdown. These children also experience the greatest gaps between their own standard of living and that of their non-custodial parents. Following its own analysis of this data base, the federal Department of Finance concluded that non-custodial parents had under-reported their income in the court files.

It is essential, and in the best interest of children, that a complete financial picture of the non-custodial parent be provided early on in the process, and in every case, to ensure that proper child support determinations are made. To identify cases where there may have been planned reductions of income, it is essential that parties demonstrate not only their current situation but that of the past three years. Given the importance of this exercise, jurisdictions should ensure that rules are in effect which require the parents to produce this information. Where this obligation is disregarded, sanctions could be imposed or legal inferences on income level allowed. This would confirm the importance of this exercise.

**Recommendation:**

- 4.2 The Family Law Committee recommends that, for child support applications, where appropriate legislative provisions are not in place, jurisdictions will ensure that there are rules for enforcement of appropriate measures, to ensure that the relevant parent produces detailed financial information concerning his or her present financial situation and that of the last three years.**

**4.3 ATTRIBUTION OF INCOME:**

**Issue:**

When determining the amount of child support it may be that a parent's current financial information as presented, does not provide a true or complete picture of his or her financial situation. In these cases, the court should retain the discretion to attribute income in the best interest of children.

**Discussion:**

It is in the best interest of children that the courts have the discretion to attribute income to a parent in special circumstances. Under the current system, the courts already use their discretionary power to attribute income. For example, a parent may have under-productive assets, have income or assets which have been diverted to affect the level of child support or have particular "in kind" benefits such as free housing, to which a value should be attributed. On the other hand, a parent could be underemployed simply to avoid payment of child support or be voluntarily unemployed without a good justification such as the needs of a child or reasonable educational needs.

In such cases, the courts should be allowed to attribute a reasonable income while being sensitive to the gender wage gap and establish the child support award based on this attributed income.

**Recommendation:**

- 4.3 The Family Law Committee recommends that the Courts continue to attribute income in appropriate circumstances.**

**Such circumstances should include, but not be limited to the following: where there is underemployment or unemployment not required by a child's needs or by a parent's reasonable educational or health needs; where it appears that income has been diverted to affect the level of child support; where assets are under-productive; where there are "in kind" benefits such as housing.**

## **5. APPLICATION OF FORMULA:**

There are a number of issues to address with regard to the application of the child support formula:

- (1) what weight should the formula be given?
- (2) when should the courts consider departing from the formula?
- (3) how should the formula be used?

### **5.1 WHAT WEIGHT SHOULD THE FORMULA BE GIVEN?**

#### **Issue:**

A child support formula could be made applicable in one of three different ways: on a mandatory basis, as a rebuttable presumption, or as an advisory guideline.

#### **Consultation:**

In general, the respondents favoured the adoption of a presumptive approach. Major concerns were raised about the adoption of a formula to be applied on an advisory or a mandatory basis. However, some organizations such as the "Barreau du Québec" and the "Chambre des Notaires du Québec" were not supportive of the idea of a pre-established formula, but preferred information on the costs of children which could be provided to the courts to use on an advisory basis.

#### **Discussion:**

The economic evidence upon which the formula described above is based, represents average expenditures on children in Canada. Presumably, the application of the formula would, thus, be equitable for the majority of Canadians. However, there may be circumstances where doing so would create undue hardship. For example, the court may be confronted with the situation of a low income non-custodial parent, with many children and a high amount of debts, where a strict application of the formula would result in higher overall payments than his or her total earnings.

In these cases, a party should be allowed to apply for a deviation from the formula, and the courts should retain judicial discretion to vary the amount accordingly. But, to ensure that most Canadian children benefit from the formula, it should operate as a rebuttable presumption.

The courts would originally apply the formula in all cases, but should a party seek a different amount, the courts could depart from the formula based upon the suggested undue hardship test or other prescribed circumstances.



**Recommendation:**

- 5.1 The Family Law Committee recommends that the child support formula be incorporated in legislation **and applied by the courts as a rebuttable presumption.**

**5.2 WHEN WOULD IT BE APPROPRIATE TO CONSIDER DEPARTING FROM THE FORMULA?**

**Issue:**

There may be circumstances when the courts would not follow the child support formula, for example, when the income of the non-custodial parent is lower or higher than the income levels dealt with in the formula. Also, although the formula implicitly takes into account an average party's capacity to pay at a specific income level, there may well be exceptional circumstances relating to a parent or child, that would justify a departure from the proposed award if not doing so would create undue hardship.

**Consultation:**

The consultation has provided the Family Law Committee with various suggestions regarding the treatment of other dependents, mandatory minimum awards, high level of debts, health related costs, special needs and access costs. These comments have been taken into account in the development of the recommendations with respect to when the courts should consider departing from the formula.

**5.2.1 Income level**

The child support formula described above covers situations where the non-custodial parent's income ranges from \$6,744 to \$149,999 a year. Where the non-custodial parent's income is lower or higher than the range of the formula, the courts should have the discretion to award a different amount than the formula amount.

Although the formula would not apply to non-custodial parents earning under \$6,744 a year, there may be non-custodial parents at this income level who should be paying child support. For example, a university student whose own parents provide him with the costs of lodging, food and tuition could arguably be required to pay child support out of money earned from a part-time job. As well, a non-custodial parent earning over \$150,000 could more than pay the highest amount produced by the formula and the courts should be allowed to award an appropriate amount over that threshold.

**5.2.2 Threshold test for seeking a departure from the formula based upon undue hardship:**

It is true that in some cases it may be financially difficult to maintain the previous lifestyle while paying the amount of child support. However, the Family Law Committee considered that for the protection of the child's best interests, a test should be applied before a party was allowed to request departure from the formula because it constitutes

undue hardship. The test would in fact consist of a comparison of the overall standards of living of both households.

Arguably, if the first family is living at a lower standard of living than the non-custodial parent's family, it would be inappropriate to reduce the child support award in the first family and the court would not have to make a decision whether there is undue hardship. However, if the custodial parent's household is better off than the non-custodial parent's household, the courts should then be able to assess the financial situation of the non-custodial parent and determine whether there is undue hardship justifying a departure from the formula.

In comparing both households' standards of living, the courts should consider all relevant circumstances such as: the income of a new spouse of the custodial and non-custodial parent, the number of children in both households, any child and spousal support awards being paid or received. As well, where the voluntary unemployment of a new spouse has a major impact on that household's standard of living, the courts should consider attributing income for the purposes of the exercise of comparing the two households standards of living. Finally, guidance could be provided to the courts as to how to compare standards of living through income to needs ratios.

### **5.2.3 When should the court make a finding of undue hardship?**

Presumably, the courts would only make a finding of undue hardship in lower income families. Non-custodial parents with higher incomes would rarely have any difficulty in meeting the established award. Higher income non-custodial parents may find that the payment of the award impacts on their standard of living. This, however, should not be a consideration in the determination of undue hardship for two reasons:

- (1) the amount was determined according to an average parents' capacity to pay; and
- (2) the award is a statutory right of the child.

Different circumstances could justify a finding of undue hardship such as:

- Debts
- Existing child support orders
- Having the custody of other children
- Extraordinary costs of exercising access

However, in determining whether there is undue hardship based upon these reasons, the courts should examine whether or not the hardship was caused by a deliberate act of the parent. The courts should then be cautious about allowing claims of undue hardship in these situations if it conflicts with the best interest of children.

#### **A. Debts:**

In some circumstances, the debt load of a parent could justify a departure from the formula amount. However, courts should first proceed on the assumption that all non-custodial parents are presumed to be able to afford the amount established by the child support formula notwithstanding the presence of debts. This is because the formula produces

average awards, reasonable for average family circumstances. Average Canadian families do have debts yet they are expected to cover the needs of their children.

There may be exceptional circumstances, such as where an unfair division of debts was agreed to, or where extraordinary amounts of family debts were present, where the courts could make a finding of undue hardship and modify the level of the child support. However, where a court does make a finding of undue hardship because of the high level of family related debts that a parent has assumed, it should also determine an appropriate time-limit to repay those debts and ensure that, after it has lapsed, the formula award starts to apply. This would allow relief to the parent who needs it, yet ensure that the child will receive an appropriate award as soon as possible without forcing the parties back to court with high legal fees.

#### **B. Extraordinary costs of exercising access:**

Some have argued that there should be financial recognition of non-custodial parents' costs of exercising access.<sup>11</sup> The Family Law Committee has decided to examine this issue from the child's perspective. Unless it is determined not to be in their best interest, the children's right to visit their non-custodial parent is usually respected and the non-custodial parent is expected to be able to afford the costs of access. However, in some cases, the travel costs of exercising access may be significant and this expenditure, over and above the amount of the formula could create undue hardship. In these exceptional, but real cases, the court should be able to adjust the support award to ensure that it does not deprive the child of his or her access rights. As well, the courts should continue to be allowed to grant child support to access parents, in these exceptional cases where it is needed to cover the children's basic needs during visitations where they would not be covered otherwise. Not granting child support in these cases would negatively impact upon the children's best interest.

#### **C. Existing support orders:**

Currently, upon determining a child support award, if the support payor already has previous support obligations these would be considered in the determination of the award.

As much as possible, all children of a parent should be treated equally. To completely respect this principle in determining child support, the formula should be applied to the total gross income of a parent, notwithstanding the fact that a portion of that income has already been committed to a previous support obligation. This method of applying the formula may, in some circumstances, create undue hardship, particularly in low income situations. Where it does, the courts should be allowed to depart from the formula.

In these cases, the courts may consider simply deducting an amount not higher than that of the previous award, from the parent's total income, before applying the child support formula to the remaining income.

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<sup>11</sup> This issue is often linked to that of the non-financial contribution of custodial parents. They are both very controversial and would require specific additional economic research which the Committee has not undertaken.



#### **D. Where a parent provides support for a child in his or her custody:**

At the time of a child support determination, it is possible that a parent already has custody of a child, other than the one subject of the current support determination. (This situation is different than split custody cases where the children all have the same two parents.) If application of the formula, in these cases, creates undue hardship, the courts could depart from the formula accordingly.

One way of departing from the formula could be to deduct from that parent's income, an amount not higher than what the formula produces at his or her income level, for the child in his or her custody and determine the award on the remaining income.

#### **5.2.4 Health related expenses and special needs:**

In Canada, most health and medical expenses are covered through provincial and territorial insurance plans. But, parents may also incur extraordinary medical and health related expenses for their children which would not be covered by these plans. This would include: special medication, orthodontal and dental costs, and costs associated with special needs, such as emotional and psychological counselling or specialized child care. This category of expenses is not meant to include everyday medication for children such as over the counter medication and the odd prescription drug. It could, however, include the costs of providing a child with additional sums in cases where he or she would have special needs.

The equivalence scale used to determine the costs of children in the post-family breakdown context, only provides for average costs of a child. Where extraordinary expenses are incurred, these costs would not be compensated completely but would have been averaged out through the population, even to those who may not incur such expenses.<sup>12</sup>

Such costs are not borne by the majority of custodial parents, but, where incurred, they can represent significant amounts of money. For this reason the Family Law Committee considers it necessary to make a special provision for them. Not doing so could mean depriving children of special care when it is needed. This would not be in the best interest of children.

Arguably, where a child has special needs, these costs could be treated apart from the formula. In these cases, the specific amount could be determined and divided between the parents in relation to their income. The custodial parent would also have to provide a complete statement of income to determine his or her share of these special needs.

The proportional share of health related expenses payable by the non-custodial parent could then be added to the award as generated by the child support formula. Where these costs are time limited, this limit should be indicated in the child support order, with a stipulation that upon termination, the formula determined amount would apply. This would limit the need for future variation applications.

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<sup>12</sup> This same argument could be made for day care or child care costs. For the reasons expressed in Section 2.3.1 the Committee accepted that day care costs could be treated differently.

Ideally, the parties should be capable of determining the amount of these special needs and dividing them between themselves. Of course, where this is not possible the courts would have to make the specific determination.

**Recommendations:**

**5.2. The Family Law Committee recommends that the courts apply the formula as a rebuttable presumption and depart from the suggested amount in the circumstances presented below.**

**5.2.1 The Family Law Committee recommends that, wherever appropriate, the courts could order a child support award in situations where the non-custodial parents' income is below the lowest income level provided for in the formula.**

**As well, the courts could grant an order for support greater than the maximum provided for in the formula when the income of the non-custodial parent is higher than the maximum income to which the formula applies.**

**5.2.2 The Family Law Committee recommends that the courts have the authority to order an amount other than the formula amount, if a party would suffer undue hardship.**

**The Family Law Committee recommends that non-custodial parents not be allowed to claim undue hardship if, following the application of the formula, the non-custodial parent would be living at an equal or higher standard of living than the custodial parent and children.**

**The income of a new spouse of the custodial parent or non-custodial parent, as well as any child and spousal support awards received or being paid, should be considered for the purposes of comparing the standards of living of the two households, but should not be included in the income of the parent when applying the formula (See Recommendation 10.1). In this exercise, the courts should consider attributing income to a dependent spouse of a non-custodial parent when the dependency is the result of a voluntary decision.**

**5.2.3 The Family Law Committee recommends that in determining undue hardship, the Courts may have regard to:**

- (a) where there are debts, the extent to which they were reasonably incurred:
  - (i) prior to separation for the benefit of the family;**
  - (ii) for the purposes of earning income.****

**Where the court decides to depart from the formula because of debts, it should consider establishing a reasonable time limit for their repayment after which the formula amount would apply.**

(Departure from the formula based upon debts should be effected with caution. The formula takes into account normal levels of household debts in the determination of the amount payable).

(b) the need to allow for extraordinary costs of exercising access where failure to do so would result in the child being substantially deprived of access;

(c) existing orders to pay support for a child who is not the subject of the current application;

(d) the necessity to provide support for a child in the custody of the party;

In regard to subparagraphs c) and d) above, the Family Law Committee recommends that all children of the same parent be treated equally whenever possible. In this context, where one or both parents have previous child support obligations, the formula should be applied to the non-custodial parent's total gross income, notwithstanding payment of another child support award or custody of a dependent child.

In these cases, if application of the formula to the total income of the non-custodial parent creates undue hardship, the courts may, before applying the formula, deduct from the non-custodial parent's income an amount up to the amount of the previous child support award, or if the paying parent has the child in his or her custody, an amount up to the amount that the formula would provide, as if the child were not in the payer's custody.

**5.2.4** The Family Law Committee recommends that where the child has special needs (e.g. extraordinary health care costs) that justify a higher award, the custodial parent would not have to establish undue hardship.

In these cases, the actual costs associated with the special need should be divided between the parents in proportion to their incomes, and the share of the non-custodial parent should be added to the formula amount.

### **5.3 USE OF A CHILD SUPPORT FORMULA:**

As previously discussed, a child support formula could be used by the Courts as a rebuttable presumption. Suggestions are made above, as to circumstances where it would be appropriate to depart from the formula. One of the reasons for considering a child support formula was to provide assistance to parties in the negotiation of child support, to limit litigation and legal costs. Parties should, therefore, continue to be free to negotiate between themselves the amount of child support. However, the formula would provide them with assistance in this exercise.

The Divorce Act currently requires the courts to review the final agreements of the parties to ensure that reasonable arrangements have been made to provide for the children's needs. This requirement would be maintained and the courts would have the formula to assist them



in this exercise. Provincial and territorial governments may wish to consider introducing similar provisions within their own legislation.

**Recommendation:**

- 5.3 The Family Law Committee recommends that parties remain free to negotiate the amount of child support between themselves with the assistance of the child support formula. The final agreement should, however, be reviewable by the courts, to ensure that reasonable arrangements have been made to provide for the children's needs, in accordance with Section 11(1)(b) of the Divorce Act.**

**6. TRANSITION ISSUES:**

In considering the introduction of a child support formula some important issues must be considered:

- the situation if the federal government decided to allow application of a provincial formula for orders made under the Divorce Act
- application of the formula to existing orders, and
- the assessment of the impact of the formula on child support awards.

**6.1 SITUATION IF FEDERAL GOVERNMENT DECIDED TO ALLOW APPLICATION OF PROVINCIAL FORMULA TO CHILD SUPPORT AWARDS MADE UNDER THE DIVORCE ACT.**

**Issue:**

Currently, no jurisdiction has implemented a child support formula within their legislation. One of the options set out in Section 2.2 above, if adopted, would allow a provincial formula to apply to orders made under the Divorce Act. If the federal government decided to accept this option, it would be preferable to have the provincial formula come into effect before or at the same time as the federal formula. (A federal formula would still be required for those jurisdictions without a provincial formula). This would avoid confusion that might arise if a federal formula applied in a province for a short period of time before the province was able to adopt its own formula.

**Recommendation:**

- 6.1 If the federal government opted to allow application of a provincial formula to orders made under the Divorce Act, it would be preferable for the federal formula to come into effect at the same time or after the provincial formula.**

## **6.2 SHOULD A CHILD SUPPORT FORMULA APPLY TO EXISTING AWARDS?**

### **Issue:**

Upon introducing a child support formula, it is foreseeable that a significant number of parents with existing awards may wish to apply for a variation so that the level of their award is changed to reflect the formula. The question the Family Law Committee has to address is whether it would be appropriate to have the child support formula apply to these existing awards.

### **Consultation:**

The consultation highly favoured an approach which would allow parties with existing awards to apply for a variation in accordance with the formula, upon its introduction. However, there was less consensus respecting the situation where an existing child support award was higher than the formula amount. Although some individuals thought higher existing awards should be reduced, others suggested that these awards should not be automatically reduced.

### **Discussion:**

The Family Law Committee has considered the question of whether the child support formula should be made applicable to existing orders upon an application of one of the parties to vary the award.

The Child Support Project was established in light of evidence that existing awards were often too low because the costs of children were being underestimated. Not allowing the formula to apply to existing orders upon a variation application would penalize children whose parents separated or divorced before its introduction. This would not be in the best interest of children.

However, where existing orders provide amounts which are higher than the formula amount, the Committee was faced with a difficult policy choice. On the one hand, the objective of consistent and equitable child support awards favours applicability of the formula. On the other hand, lowering an award would rarely favour the child's best interests. Moreover, such awards are often achieved after extensive litigation with all the costs that entails. Guided by the child's best interest test, the Committee decided not to apply the formula to existing awards which were higher than the formula amount and to revisit the decision one year after implementation.

In general, if the child support formula became applicable to all existing orders, it would generate significant increases in the levels of current child support awards. It is therefore likely that many custodial parents would apply to vary their existing awards. The courts would then be faced with a significant increase in the volume of variation applications.

Various methods could be used to limit and/or direct the process for variation of existing orders. For example, a specific threshold of 10% under which applications for variation would not be allowed, could be established.

It is also important to consider that existing orders may have been set at a specifically low level because of agreed upon, unequal property divisions. Where such set-offs have occurred, the courts should consider them in making a new child support award based upon the formula. (This issue is also addressed in Section 10 below, dealing with spousal support.

#### **Recommendations:**

- 6.2.1 The Family Law Committee recommends that an application to vary an existing award may be made by a parent, where application of the formula would indicate that the current award could be varied upwards by 10 %. (see 8.2 below)**
- 6.2.2 The Family Law Committee recommends that where an existing award is higher than what the formula would produce, no reduction of the award should be granted, based upon the formula alone, unless a significant change in circumstances has also been established. This recommendation should be reviewed one year after the implementation of the formula.**
- 6.2.3 The Family Law Committee recommends that where a custodial parent received a higher property settlement or other benefits from a settlement, in exchange for a lower child support award, such exchanges should be considered by the courts in applications to vary existing child support awards in accordance with the formula.**

### **6.3 ASSESSMENT OF THE CHILD SUPPORT FORMULA**

The introduction of a child support formula could have implications on various aspects of family law besides the actual levels of child support, such as spousal support, custody and access. The need to evaluate the impact of a newly introduced formula is critical for the first few years. An evaluation could identify certain difficulties in the formula or regarding the impact of its introduction on other areas and adjustments may be needed. The cooperation of the jurisdictions would be essential to successfully complete such evaluation.

#### **Recommendations:**

- 6.3.1 The Family Law Committee recommends that jurisdictions cooperate in the evaluation of the impact of a child support formula, once implemented.**
- 6.3.2 The Family Law Committee recommends that the child support formula be evaluated within four years and that it be reviewed after this time.**



## **7. VARIOUS CUSTODY AND ACCESS ARRANGEMENTS:**

### **7.1 SPLIT CUSTODY SITUATIONS:**

#### **Issue:**

A split custody situation is where both parents have custody of at least one child. In these cases, how should child support be determined?

#### **Consultation:**

The respondents generally agreed that every child should benefit from an individual support determination in cases of split custody.

#### **Discussion:**

Some people may assume that in split custody situations each parent is fully responsible for the child(ren) in his or her custody. This approach would be unfair where one parent has a higher income than the other, or where one has more children than the other, since one would end up contributing more than his or her share for the support of the children.

Currently, legislation does not specifically address these situations. Rather, courts have determined that children in both households should receive child support from the other parent. In split custody situations it would be appropriate to make a complete and different child support determination for the children in each household. Specific guidance on this issue in the context of new legislation would assist those who negotiate agreements and are attempting to determine what a court would adjudicate in their own circumstance.

#### **Recommendation:**

**7.1 The Family Law Committee recommends that in split custody situations (where each parent has the custody of one child or more), the formula should be applied separately to each non-custodial parent, to determine the two appropriate child support orders. The net difference between the two orders should be paid accordingly.**

### **7.2 SHARED PHYSICAL CUSTODY AND EXTENDED VISITATION:**

#### **Issue:**

Where shared physical custody or extended access result in the child spending a considerable amount of time with both parents, arguments could be made for adjusting the support award to better reflect both parent's contribution to the child's needs. It should be noted that this issue is quite different from that of compensation for access costs which has been addressed above in Section 5.2.3.

### **Consultation:**

The results of the consultation were far from unanimous on this issue. Although many respondents recognized the need to compensate parents where significant amounts of time are spent with children, they had different views as to how this should be considered. As well, some were against the idea of such compensation because it could result in increased demands for access which may not be exercised, thus forcing the custodial parent to re-apply to vary the award.<sup>13</sup>

Where they agreed with compensation for significant time spent with the children, respondents supported various options such as:

- increasing the formula award by 50% and then dividing this amount between parents in proportion to the time spent with each and in proportion to income,
- compensating non-custodial parents for the nurturing they provide to their children,
- reducing the support award for every overnight visit,
- providing limited compensation in cases of considerable time spent with both parents,

It should also be noted that several women's groups suggested that there be no compensation whatsoever for shared physical custody unless custodial parents are fully compensated for all direct, indirect, monetary, and non-monetary costs of having the custody of children.

### **Discussion:**

Shared physical custody situations, where both parents spend considerable amounts of time with the children, tend to arise from an agreement between parties usually in cases where they have a cooperative relationship with each other but could also arise because they simply cannot agree upon a sole custody arrangement. Courts have generally stayed away from making shared or joint physical custody orders where the parents do not agree with such terms and where custody is in dispute.

If parties have been capable of reaching such an agreement they will most probably also reach an agreement on the amount of child support, particularly if a formula provides some type of guidance. This reality should be recognized in addressing this issue.

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<sup>13</sup> It should be noted that financial recognition of regular access arrangements was requested by fathers' groups. Women's groups were quick to point out, however, that recognition of any costs of access should not be effected until all the costs of being a custodial parent, including the non-monetary costs, are fully compensated. These two issues would require additional research.

The Family Law Committee considers that where both parents spend a significant amount of time with the children, whether through shared physical custody or extended access arrangements, such arrangements should be recognized in the determination of child support awards.

It is generally recognized, however, that where parents opt for both spending significant amounts of time with their children, the arrangements will result in an overall increase in the children's costs. In many American states, the costs of shared custody are deemed to be increased by 50%. As well, even in cases where both parents share equal time with the children, there is usually one parent who takes on the primary financial responsibility for them: the one who purchases the majority of clothing, sport equipment and school supplies.

Therefore, in determining child support awards in shared custody situations or where there is extended access periods and shared physical custody, the parties, the lawyers, and the courts should recognize the role of the primary parent, and the fact that shared custody generally increases the costs of children.

When a non-custodial parent has regular access to his or her children, that parent usually has the care of those children for about 20 to 30% of total time in a year. Therefore, extraordinary costs of extended access and shared physical custody may occur well over this threshold, probably around 40% of total time in a year. Having a higher threshold will ensure that such compensation only occurs where both parents actually spend considerable amounts of time with their children.

If compensation for shared physical custody or extended access is awarded but the time is not being spent with the children, this could create unwarranted hardship for one of the parents who would then have to go back to court to have the order varied. If this were to happen, the high costs of litigation could even discourage custodial parents from engaging in this costly process to rectify the situation. In order to limit such a negative impact, child support orders which compensate for shared physical custody or extended access could indicate an alternative amount of child support which would apply under normal circumstances, for example, the formula amount. If the arrangements are not respected and the alternative amount is not being paid voluntarily, the custodial parent would have to go back to court and obtain a variation of the order. In such circumstances, the parent who has failed to comply to the alternative amount, could be held responsible for the other parent's legal costs.

Finally, in using their judicial discretion to determine an award in such shared physical custody or extended access situations, the courts should take into consideration the amount of the formula as well as the standards of living of both households. The determined amount should attempt to limit significant discrepancies between the standards of living of the two households between which the child will be constantly moving.



**Recommendation:**

- 7.2 The Family Law Committee recommends that where custody arrangements provide that each parent has physical custody of or access to the child for at least 40% of the time, the court should have the discretion to depart from the formula amount while considering the increased costs of such arrangements and the actual distribution of expenses between the parents.

The Family Law Committee recommends that the courts, in making support determinations in these cases, consider the amount determined by the formula as well as the standards of living of both households where the child will be coming and going, with a view to limiting significant discrepancies between the two.

## **8. VARIATION OF AWARDS:**

**Issue:**

Under the present system, an original child support award may exist unchanged for a long period of time even though the circumstances of the parties have changed. If support orders have no indexation clauses, they soon become outdated by the simple passage of time. This is not in the best interest of children. As well, if child support orders are not varied to continue to reflect the parents' changing resources, the children and/or the parents are being disadvantaged.

**Consultation:**

Many respondents expressed their concerns with the high costs of litigation and with the fact that the present system does not ensure disclosure of income between a child's parents until the onset of a variation proceeding, thus creating delays and further costs. Concerns were also raised regarding the situations where non-custodial parents suffer reductions of income and have to pay legal costs to have their orders varied to reflect any decrease in income.

Regular re-determinations were strongly favoured by some. Others were against the idea of imposing on custodial parents the traumatic experience of going back to court every year. Yearly disclosure of income was favoured, mainly by custodial parents, but some considered that this was an intrusion of privacy.

The notion of determination of awards through administrative offices, with the courts acting as a review body where there is dissatisfaction with the administrative determination, was highly favoured.

## **Discussion:**

With the assistance of a formula, child support awards could be originally determined and varied, as they are now by the courts, the lawyers and the parties themselves. The process for variation and original determinations could, on the other hand, be determined by an administrative office. This process has been implemented in other jurisdictions. Three major issues must be addressed regarding the variation process whether done through the current system or through an administrative system: the grounds for variation, the variation process and difficulties in obtaining income information.

### **Grounds for variation:**

Currently child support orders can be varied if the parties establish a significant change in circumstances or if the order contains a cost of living adjustment clause.

Variation proceedings are costly both in financial and emotional terms. Lawyers in private practice suggest that custodial parents rarely attempt to have their orders increased for these reasons. As well, non-custodial parents, whose income has dropped, often do not seek variation applications to reduce their awards, leaving them with little choice but to default on their payments.

Although more common in certain jurisdictions, the research on current levels of child support revealed that a large majority of awards have, in fact, no cost of living adjustment clauses. As well, this research shows that only a minority of court files, where child support was ordered, contain information on both parents' income. In the current system, whereby a significant change in circumstances must be established, the absence of this information could presumably create difficulties for parents wishing to obtain variation orders.

It is the right of children, and also in their best interest, to continue to benefit from the resources of both parents. Because the child lives with the custodial parent, he or she will automatically benefit from the improved standard of living resulting from any increase in the custodial parent's income. However, the child also has the right to benefit from the increased resources of the non-custodial parent. A regular re-application of the child support formula to reflect increases and decreases in the non-custodial parent's income would achieve equity and fairness to all concerned.

A child support formula could provide assistance to parties, lawyers and judges who are negotiating or making original determination or variation of awards. However, where the difference in the award would be insignificant it may not be worthwhile for the parties involved to be submitted to this process. Minor adjustments to support awards may simply create enforcement problems and increase the burden on the already overworked support enforcement offices. Therefore, it would be appropriate to establish a threshold above or under which orders would not be varied. The threshold would have to be set at a reasonable level, to allow children to benefit from non-custodial parents' resources as much as possible. The Family Law Committee considers that a 10% threshold would be appropriate.

Variation process:

Of course the current system for obtaining variation of awards could be maintained. However, this may not be in the best interest of children as the high legal costs of obtaining a varied award can serve as a disincentive for custodial parents to make such applications.

The establishment of an administrative process whereby child support determinations could be made at a minimum cost for parties, without the need for a lawyer, would be conducive to an efficient application of the formula. An administrative office would have the authority to request new financial statements from non-custodial parents every year and make yearly re-assessments based on that information. Parties not satisfied with the administrative assessment could appeal to the courts. Such administrative offices already exist in other jurisdictions.

If child support were re-determined every year or every second year through a formula and administrative office, there would be no need for cost of living clauses since the re-application of the formula would provide a better reflection of parental means. Increases in child support would be seen as the right of the child and not as a matter of a parent's choice.

Another advantage of having support orders assessed by an administrative office pertains to cases where non-custodial parents suffer decreases in income. An administrative assessment office could re-determine the awards soon after the change in circumstances. This would prevent the accumulation of unwarranted arrears, limit significantly the amount of variation applications and requests to cancel arrears retroactively and may even have a positive impact on defaults.

If the deduction/inclusion provisions of the tax system remain, another important advantage of an administrative system would be to provide to custodial parents accurate information regarding the precise portion of the award to be saved for taxes.

Although the establishment of an administrative office is very appealing, it would have significant cost implications for governments. Such administrative systems are being used successfully in Australia.<sup>14</sup> It is conceivable that they could be implemented in Canada, but their cost implications, the jurisdictional responsibilities and possible constitutional impediments should be examined in detail.

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<sup>14</sup> It is interesting to note that Australia has a very high reconciliation rate. Although there is no clear evidence, Australian officials have reported that this may be due to the fact that parties know within a few weeks of their separation the amount of child support to be paid and the financial impact of the separation of all family members. Some would argue that it is easier to reconcile after two weeks of separation than a year (and two lawyers) later.



Income information on parents following initial support determination:

Under the current system, custodial parents attempting to obtain a variation of their award must first file a variation application and only then, can they obtain income information on the non-custodial parent. Often, this involves the custodial parent retaining a lawyer. Generally, non-custodial parents do not voluntarily disclose their increases in income to custodial parents. Therefore, custodial parents have no means of determining whether their children should receive increases in child support, until well after a variation application is made and high legal costs already incurred. The risk is often not worth the potential cost to custodial parents who are said to rarely file variation applications to obtain increases in child support levels.

Means could be developed to assist the custodial parent in obtaining income information of the non-custodial parent, before initiating costly court proceedings. For example, the support order or the statute could oblige non-custodial parents to provide custodial parents, on a yearly basis, with copies of their income tax returns. This would assist custodial parents in determining whether there are grounds to seek a variation before requesting the assistance of a lawyer. However, non-custodial parents would most probably object to such transmittal of income information and serious enforcement problems could result.

Another option could be to introduce measures allowing custodial parents, without legal assistance and before starting a variation application, to require from the non-custodial parent, his or her latest income tax return and/or financial statement. The non-custodial parent would be legally obliged to produce this information. Custodial parents would then use this information to decide, with the assistance of the child support formula, whether the current income level justifies an application to vary. Only if they found it to be worthwhile, would they need to consult a lawyer and start variation proceedings.

Measures to improve income information should also be available to the guardian of a child who is not a parent or to the Crown where it is subrogated to the custodial parent's rights.

A variation of this option would be for an administrative office to have the power to request, either every year or every second year, this income information and make regular re-determinations as discussed above.

Of course, such options have cost implications for governments.

Recommendations:

- 8.1 The Family Law Committee recommends that, for the best interest of all family members, but most particularly for the best interest of children, provincial and federal governments should consider implementing measures for ensuring that child support awards continue to reflect changes in the parents' means.**
- 8.2 The Family Law Committee recommends that an application to vary an award may be made by a parent where application of the formula would indicate that the existing award could be varied by 10%.**

- 8.3 The Family Law Committee recommends that in the interest of limiting prohibitive legal costs in the variation process, custodial parents, guardians of children who are not a parent and the Crown, where subrogated to the custodial parent's rights, be authorized to request, on a yearly basis, financial information on the paying parent without commencing a variation application.

In situations where the custodial parent's income is necessary to determine the appropriate award, they should also be required to provide this information if requested by the non-custodial parent.

- 8.4 The Family Law Committee recommends that in order to limit costs and accelerate the process for determining child support awards, provincial and federal governments examine various measures for facilitating income disclosure and administrative determination and variation of child support awards.

## 9. LEGAL COSTS

### Issue:

Currently, custodial parents would have to incur the costs of obtaining a child support award unless the court awards court costs to the successful party.

### Discussion:

Child support is a right and a need of children. The application for child support should be seen as an obligation of the custodial parent to preserve the best interest of the child. However, since both parents have a joint responsibility for their children, there is validity to the suggestion that all the costs of obtaining such an award should be shared by both parents in proportion to their means.

Judges can and often do require non-custodial parents to assume a portion of the legal costs but this is not happening in the majority of cases. The Family Law Committee suggests that the costs of obtaining a child support award should be more systematically shared between the parents.

### Recommendations:

- 9.1 Since the child support award is a legal right of the child which custodial parents have an obligation to exercise on the child's behalf, the Family Law Committee recommends that the legal costs of the custodial parent incurred to obtain a child support award, be compensated in part by non-custodial parents.

The method of attributing these costs should be left to the discretion of the courts who should consider the financial situation of the parties and the willingness of the parents to cooperate in reaching a reasonable agreement.

- 9.2 The Family Law Committee recommends that where the formula amount was adjusted in the original determination of support to take into account extraordinary costs of exercising access, and there has been wilful failure to comply with the custody or access arrangements, the formula amount should be awarded and the legal costs of applying to vary the support award should be paid by the non-compliant party.**

## **10. OTHER RELATED ISSUES:**

### **10.1 SUBSEQUENT SPOUSE'S INCOME:**

#### **Issue:**

Since both parents could, at one point or another, benefit from a subsequent spouse's income, the Family Law Committee addressed the question of whether a subsequent spouse's income should be considered in making a child support award.

#### **Consultation:**

The consultation raised strong arguments for not considering new spouses' income in the determination of child support. Many respondents felt that the practice could, in itself, discourage the re-marriage of custodial parents, in particular.

#### **Discussion:**

Of course, subsequent spouses have no legal obligation towards the children of their new spouse unless an *in loco parentis* obligation has developed. But if a parent benefits from the additional income, perhaps arguably the child should too, by operation of a formula. Recently, there has been some case law which considered subsequent spouse's income in making child support determinations. It is true that when the custodial parent has a new spouse, the child will likely directly or indirectly benefit from the additional income, but recognizing this as a legal responsibility by operation of a formula may deter remarriage for both parents. As well, such a practice would greatly complicate the process of support determination.

#### **Recommendation:**

- 10.1 The Family Law Committee recommends that, in general, a new spouse's income should not be considered in the determination of child support. However, in determining whether there is undue hardship, it should be considered when comparing the standards of living. (see Recommendation 5.4 above).**



## **10.2 CUSTODY AND ACCESS**

### **Issue:**

Many comments were received regarding custody and access including the effect of increasing awards on the number of custody disputes. The federal Department of Justice released a Discussion Paper on the subject in March, 1993 and consultations concluded in December 31, 1993. The results of the consultation have been shared with the Family Law Committee, which started to examine the issue at its November 1994 meeting.

### **Recommendation:**

**10.2 The Family Law Committee recommends that custody and access issues raised in the consultation be addressed by the Custody and Access Project.**

## **10.3 SPOUSAL SUPPORT**

### **Issue:**

Issues which must be addressed regarding spousal support are those of the custodial parent's non-monetary contribution and the relationship between spousal support, division of property and child support.

### **Consultation:**

The issue of compensating a custodial parent for all the non-financial costs of custody was raised in the discussion paper. Although the responses to the consultation generally recognized that this item was difficult to evaluate, there was a high level of support (particularly from women's groups) for compensating this item within a child support legislation scheme. However, others argued that these costs are compensated by the emotional advantage of having the children on a daily basis. This issue is also linked by some respondents to that of compensation of non-custodial parents' access costs. The Family Law Committee was somewhat criticized in the consultation for not addressing the relationship between spousal support, division of property and child support.

### **Discussion:**

#### **Non-monetary contribution:**

It has been suggested that having the day-to-day custody of children has real non-monetary costs for custodial parents. They may be unable to take full time work or be constrained from working overtime. Because they have the custody of the children they are severely limited in pursuing their own career or education. They are also responsible for day-to-day care including shopping for clothing and groceries, house cleaning, preparation of lunches, attendance at school meetings, and supervising homework.

A custodial parent's non-monetary contribution can already be compensated by way of spousal support under the Divorce Act as well as under some provincial legislation. However, it has been suggested that since these costs are directly linked to the custody of children, and that spousal support may often not be at issue between the parties, that this subject could be addressed within the child support formula.

Since the publication of the Family Law Committee's first Discussion Paper, the Supreme Court of Canada in Moge v. Moge [1992], 3 S.C.R. 813, has reaffirmed the compensatory principles of spousal support as set out in the Divorce Act.

The Family Law Committee considers that the custodial parent's non-financial contribution is a separate issue from that of the direct costs of children. The Family Law Committee will consider this issue in the context of a future review of spousal support.

#### Relationship between spousal support, division of property and child support:

The Family Law Committee recognizes that in some cases (for example, where there are many children) the granting of a child support award as determined by the formula may impact on the non-custodial parent's resources to the point that it would be difficult to establish an adequate spousal support award.

In these cases, it is recommended that child support be awarded according to the formula. Spousal support awards may have to be established at a lower level than they otherwise would have been because the remainder of the income would be limited. The impact of a child support formula would presumably be considered in the evaluation of a child support formula and also be considered by the Family Law Committee in its future review of spousal support.

Division of property should rarely have an impact on the ability to pay the child support award. However, in cases where the assets are not divided equally (for example, an agreement between parents could give the custodial parent full ownership of the family residence instead of half), the court should have the discretion to deviate from the formula award, if not doing so causes undue hardship.

#### Recommendations:

**10.3.1 The Family Law Committee recommends that in cases where it is difficult to pay both child and spousal support, priority should be given to child support. Further, the courts should consider alternative methods of awarding spousal support such as lump sums and postponing commencement of the spousal support award.**

**10.3.2 The Family Law Committee recommends that the non-financial contribution of custodial parents toward their children not be compensated within the child support formula at this point in time.**

## **10.4 SUPPORT ENFORCEMENT:**

### **Issue:**

The consultation on child support raised major concerns regarding the current problems of enforcing support awards. Although major improvements in this area have been made in the past ten years, there continues to be significant problems in particular with regards to the self-employed and in obtaining accurate and current data for tracing purposes. To address these concerns, the Family Law Committee has developed the attached draft National Enforcement Strategy which is found in Appendix D.

### **Recommendation:**

**10.4 The Family Law Committee recommends that governments give priority to this issue by approving the further development of the attached draft Future Directions for Development of a National Support Enforcement Strategy. The Family Law Committee should report to Deputy Ministers within a year with specific recommendations to further improve this area.**

## **10.5 MEDIATION:**

### **Issue:**

Mediation has become an increasingly popular alternative to the adversary system in family law.

### **Consultation:**

Many submissions have suggested that mediation be made more available for the purposes of determining child support and for family law disputes in general.

### **Discussion:**

A mix of private and public mediation services is now established throughout Canada, but suggestions have been made that improvements are needed on a variety of fronts.

The Family Law Committee is of the view that a child support formula will reduce disputes between parents over the issue of child support. Where, however, disputes do arise, mediation may play a useful role in resolving them.

### **Recommendation:**

**10.5 The Family Law Committee recommends that jurisdictions continue to explore ways to improve mediation services in the resolution of family law disputes, in appropriate cases.**



## **10.6 VIOLENCE:**

### **Issue:**

A few submissions suggested that the link between violence against women and children had been ignored.

### **Discussion:**

For women trying to escape violence, mechanisms should be established to ensure that child support awards are received without the support payor being able to obtain information on her whereabouts. Such mechanisms are already in place in some jurisdictions and should be established where they do not exist. As well, a study of possible links between support enforcement measures and acts of violence against women could be conducted as part of the research suggested in the National Enforcement Strategy.

### **Recommendation:**

- 10.6 The Family Law Committee recommends that where violence is an issue and where such mechanisms do not exist in a given jurisdiction, arrangements should be made to keep the location of the recipient parent confidential while ensuring that child support is received.**

## **10.7 TAXATION OF CHILD SUPPORT:**

The Family Law Committee's complete analysis of this issue is contained in the Family Law Committee's Working Paper on Taxation of Child Support attached as Appendix E. The Family Law Committee's conclusions are as follows:

1. Through this Working Paper the Family Law Committee has attempted to assess the current tax system, to develop ways of improving it and to explore other possible tax options.
2. Both the advantages and disadvantages of the current deduction/inclusion system are outlined.
3. The Family Law Committee has also identified the following objectives that should guide the development of future tax policy:
  - The value of the current tax subsidy which makes more money available for the support of children (estimated at \$300 M) should be preserved.
  - This tax subsidy should be more effectively delivered to children.
  - The taxation system should recognize the interests of children in need.

- The tax treatment of child support should be perceived as being fair and equitable.
  - The tax treatment of child support should be simple and understandable.
  - The tax treatment of child support should not conflict with the family law concept of child support as a payment from one parent to the other for the benefit of their children.
4. Using these objectives as a guide, the Family Law Committee has considered four general tax reform approaches. These approaches are:
1. Maintaining the deduction while eliminating the inclusion.
  2. Identifying improvements that can be made within the existing deduction/inclusion model.
  3. Identifying alternatives to the deduction/inclusion regime.
  4. Adopting an elective system.
5. The Family Law Committee does not recommend pursuing further the first option of maintaining the deduction and eliminating the inclusion.
6. Similarly, the majority of the Family Law Committee members does not recommend the fourth option of adopting an elective system. It would be very difficult to administer and would defeat two of the purposes of introducing a child support formula: simplicity and reduced disputes and litigation.
7. The Family Law Committee recommends that two options be further examined:
- 1) improvements to the existing deduction/inclusion system with the introduction of a child support formula and the possibility of shifting the responsibility to pay the taxes to the support payer at the lower of the two parents' rates.
  - 2) changing the system to a no deduction / no inclusion system combined with preserving the value of the \$300 M subsidy and targeting it to children.
8. Maintaining the deduction/inclusion system would preserve the potential income splitting tax benefit which, in 59% of cases, can make more money available for the support of the children.
9. Having the taxes paid by the paying parent would solve the equity concerns associated with requiring the custodial parent to pay taxes.
10. The Family Law Committee recognizes the potential of a child support formula to address the current problem, that neither the Income Tax Act nor family law ensures that the tax subsidy, when it arises, is passed to the custodial parent for the children.

11. The Family Law Committee recognizes that the most severe limitation of a child support formula in addressing the tax issue is that it cannot resolve the problem for the significant minority of parents who pay higher overall taxes than if there was a no deduction/no inclusion system.
12. The Family Law Committee considers that the tax treatment of child support should not generate higher overall taxes for separated families than if there was a no deduction/no inclusion system.
13. The Family Law Committee considers that eliminating the deduction/inclusion provisions would solve all the concerns it has raised with this system and in particular that of the perception of inequity.
14. The Family Law Committee's recommendation of eliminating the deduction/inclusion provisions is made in the context of maintaining the value of the current subsidy and passing it on to children who need it.
15. The Family Law Committee has identified three possible ways to pass on this subsidy to children and recommends that they be explored further. The three options are:
  - enhancement of the basic Child Tax Credit to all low income families;
  - increasing the Equivalent to Married Credit;
  - creating a new credit or benefit for children of separated and divorced families.
16. The Family Law Committee also recommends that, if new tax provisions and a new system for determining child support are to be implemented, that their introduction be coordinated in time. This would limit the confusion, cost, and complexity encountered by the public, government, and the courts in dealing with changes to the current law.



## **PART II**

### **RESULTS OF RESEARCH**

#### **INTRODUCTION**

In June 1990, the Federal/Provincial/Territorial Family Law Committee embarked on a study of child-support guidelines or formulas to be used in instances of family breakdown. The following year, the Family Law Committee published a report, *Child Support: Public Discussion Paper*, which reviewed the problems in the current system, raised possible alternatives for reform, and sought the public's views on related policy issues.

It was clear from early stages of the study that a great deal of research was needed to formulate a comprehensive policy. Consequently, the Family Law Committee invited the Research Section of the Department of Justice Canada to assist in developing and implementing a research programme. The work was carried out in three phases:

- Phase 1 – Development of expenditure models and apportioning approaches;
- Phase 2 – Refinement of expenditure models and apportioning approaches;
- Phase 3 – Selection of the preferred formula.

This document presents a summary of the research results. (For further details, see "An Overview of the Research Program to Develop a Canadian Child Support Formula", Department of Justice, Canada.)

#### **SECTION 1: PHASE 1 OF THE RESEARCH - DEVELOPMENT OF EXPENDITURE MODELS AND APPORTIONING APPROACHES**

A set of studies was commissioned by the Family Law Committee to determine the costs of raising children in Canada, the results of which were summarized in its May 1992 report, *The Financial Implications of Child Support Guidelines*. This report focused solely on the financial and economic aspects of child support. It reviewed the economic studies on average child-rearing expenditures which had been commissioned and applied the results to several child-support formulas. It also examined the current income tax treatment in the context of child support.

Although the studies provided a comprehensive analysis of these expenditure models and apportioning approaches, further research was needed to critically assess the various formulas and to develop just and workable policies.

## **SECTION 2: PHASE 2 OF THE RESEARCH - REFINEMENT OF EXPENDITURE MODELS AND APPORTIONING APPROACHES**

In Phase 2, the researchers developed the following: 1) a database on current levels of child support, 2) a critique of the expenditure models and apportioning approaches, and 3) a comparison of the simulated awards (generated by the various expenditure models in combination with the apportioning approaches) with current awards.

### **2.1 CREATION OF A DATABASE ON CURRENT LEVELS OF CHILD SUPPORT**

To examine the potential impact of any formula or guideline, it was necessary to collect information on current levels of child support from various sites across Canada.<sup>15</sup>

The sample which was constructed included all cases that involved awards for child support processed during a three-month period, in 1991, in selected court districts in Calgary, Edmonton, Saint John, Campbellton, Toronto, Vancouver, Whitehorse, Yellowknife, Montreal, Joliette, Richelieu, Athabaska, St- François, Abitibi, and Quebec City. Court staff in each site completed a questionnaire using the information contained in files - and/or made available during the court process - on all divorce and separation cases in which the government, a parent, or a person other than one of the parents requested an application for child support. This generated a usable sample of 869 cases.

The database also included limited socio-demographic information on the family, such as level of earned income and number and ages of children. This permitted a comparison of current awards with the simulated awards that would be generated using various formulas.

In addition to examining the amount of the award by number of children and income levels of parents, the standards of living of custodial and non-custodial households were also compared. This required the use of income-to-need ratios which facilitated comparisons of standards of living across households of different sizes.

It should be noted that although the sample size is somewhat limited, at 869 cases, it nevertheless represents the general population of cases involving child support. An in-depth examination of other potential sources of information (mainly tax databases) indicated that although this database under-represents high-income earners, it does, overall, represent those cases that child-support formulas are intended to cover.<sup>16</sup>

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<sup>15</sup> For further information see Daniel Stripinis, *Report on the Creation of the Child Support Database*, Department of Justice Canada, 1992.

<sup>16</sup> The database developed for the 1990 Department of Justice Canada report, *Evaluation of the Divorce Act*, by Jim Richardson was not utilized because the sample sizes were too small and the data did not systematically include information on the income levels of both the custodial and non-custodial parents.

Following are the characteristics of the cases included in this database.

- The average gross annual income of non-custodial and custodial parents is \$31,101 and \$19,572, respectively. The mean income of the average custodial parent is, therefore, about 63 percent of that of the non-custodial parent.
- In most cases, the standard of living of both parties declines as a result of the separation.
- Among non-custodial parents, there is a great deal of variation in the amount of the award not only across income levels, but also within income categories.
- The average monthly award is \$255 per child and \$393 per family. Average awards vary significantly by province. The awards for all children range from \$260 in New Brunswick to \$450 in British Columbia. The awards per child range from a low of \$180 in New Brunswick to a high of \$293 in British Columbia. It is important to note that the range in average awards by province is positively correlated to the range in average incomes by province.<sup>17</sup>
- Whenever the non-custodial parent earns an income of \$25,000 or more, his or her standard of living is higher than that of the custodial parent and children, regardless of the latter's income level and number of children.
- In general, when both parents are in a low-income category (under \$15,000), and there is only one child, the custodial parent has a higher standard of living after taxes (presuming payment of the determined awards). If there are two children, the parents have similar standards of living, and if there are three children, the non-custodial parent has the higher standard of living after taxes and payment of awards.
- In families that have only one child, the non-custodial parent pays a higher percentage of the "costs of the child" (for a definition of this term, see 2) a) below).<sup>18</sup> However, if there are two or more children, the non-custodial parent's contribution, as a proportion of the total costs, decreases substantially.

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<sup>17</sup> According to the 1990 Department of Justice Canada report, *Evaluation of the Divorce Act*, by Jim Richardson, average child support has increased from \$216 a month in 1988 to \$255 in 1992. Although there has been an increase in the awards, this slight increase has not kept pace with the rate of inflation.

<sup>18</sup> For this study, the "costs of the child" were determined by using the equivalence scale underlying the "Low Income Measures" produced by Statistics Canada. For example, consider a family composed of a custodial mother and one child. The mother earns \$15,000 and receives \$4,000 in child support. Her total income before tax is therefore \$19,000. For the purposes of this example, assume that after tax she is left with \$16,000. Using the Statistics Canada equivalence scale of 1 to 1.4, the child is assumed to cost \$4,571 ( $.4 [1.4 - 1.0] \div 1.4 \times \$16,000$ ). Assuming that the real cost of the child to the non-custodial parent is \$2,600 (\$4,000 minus his tax deduction), the non-custodial parent would be paying 57 percent of the costs ( $\$2,600 \div \$4,571$ ).



## 2.2 A CRITIQUE OF THE EXPENDITURE MODELS AND APPORTIONING APPROACHES

Child-support formulas can best be conceptualized as consisting of two components: (1) estimates of the costs of children either within marriage (as in the Flat Percentage or Income Shares formulas discussed below) or after separation or divorce (as in the model developed by the Department of Justice for the Family Law Committee, hereafter referred to as the "Revised Fixed Percentage" formula); and (2) a methodology for apportioning or dividing these costs between the two parents according to some criteria.<sup>19</sup>

In choosing a child-support formula or guideline, it was therefore crucial to critically assess the theoretical concepts behind both the expenditure models and the apportioning approaches.

### 2.2.1 A CRITIQUE OF THE EXPENDITURE MODELS

In Canada, there are no accurate empirical data on the costs of raising children. All approaches to estimating child costs present theoretical problems and the empirical estimates have certain apparent anomalies. This overall finding simply reflects the current state of the research in this area.

Most economists would agree that choosing a set of child-cost estimates is very controversial and requires researchers to make a number of arbitrary decisions.<sup>20</sup> One problem pertains to the term "costs of the child." Although there are a number of different meanings in the economic literature, most expenditure models use a notion of "costs" that is not necessarily related to the lay person's use of the term. To economists, "child costs" is typically a theoretical construct designed to permit comparisons of well-being between families of different compositions. Most importantly, the resulting "costs of the child" do not represent what is actually spent on children. Rather, the resulting figure is the total family income required to bring parents in families with children up to the same standard of living they would have in the absence of children.

Another problem with expenditure models concerns the various ways in which the theoretical approaches are implemented to derive the empirical estimates. Given the nature of the empirical work, researchers are, for example, required to make a variety of assumptions about the precise functional form and the choice and construction of variables

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<sup>19</sup> The Federal/Provincial/Territorial Family Law Committee's 1992 research report, *The Financial Implications of Child Support Guidelines*, summarizes the various methods used to generate estimates of expenditures on children in Canada, and describes in detail the various apportioning approaches. For further information, see also Ross Finnie and Daniel Stripinis, *The Economics of Child Support Guidelines*, Université Laval (Cahier de recherche 93-03 du Groupe de Recherche en Politique Economique, Grepe), 1993 (hereafter cited as Finnie and Stripinis, 1993).

<sup>20</sup> For a summary of these views, see Martin Browning, *Cost of Raising Children*, Department of Justice Canada, 1991.

used in the analysis. In short, there are a variety of ways to implement the models empirically and, as a result, a broad range of estimates can be generated by applying the same economic model.

Finally, actually using the models to estimate child costs obviously requires data. The Family Expenditure Survey (FAMEX) was used for all empirical work in this study because it is the only national database containing expenditure data.<sup>21</sup> However, there are some inherent problems with this database and it could be argued that it is inadequate as a source for deriving sufficiently reliable estimates of spending on children.

Consultations with leading Canadian economists in the field including those who carried out the commissioned research, confirmed that there were problems with *all* approaches. However, following a thorough review of the four preferred expenditure models (Revised Extended Engel, Adult Goods, Consumption, and Blackorby/Donaldson), it was determined that the Revised Extended Engel model was probably the most suitable in terms of both the underlying theoretical principles and the empirical results produced. Nonetheless, problems with this model were also noted.

The results of the public consultation following the release of the Family Law Committee's discussion paper and research report unanimously confirmed the economists' conclusions that all models were problematic. Many of the submissions indicated that FAMEX, having been designed for other purposes, was not suitable for their analysis. Suggestions were made to discard the economic expenditure models altogether and to develop an alternative approach to estimating the costs of children.

### 2.2.2 A CRITIQUE OF THE APPORTIONING APPROACHES

As noted earlier, a child-support formula typically consists of a method to determine child costs, *and a mechanism for apportioning the costs between the two parents.*

There are a variety of methods for apportioning these costs, and the Family Law Committee considered seven approaches, which are thoroughly discussed in its research report, *The Financial Implications of Child Support Guidelines*, 1992. These are:

- (1) Income Shares
- (2) Income Shares with Reserve
- (3) Surplus Shares (known in the literature as "Delaware-Melson")
- (4) Flat Percentage
- (5) Flat Percentage with Reserve

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<sup>21</sup> Statistics Canada conducts a National Family Expenditure Survey (FAMEX) approximately every four years. The data include detailed expenditure information gathered from a random sample of more than 10,000 Canadian households. The basis for the models examined in this study use the 1986 survey.

- (6) Income Equalization
- (7) Australian Guidelines

After the release of the research report, two additional proposals were also considered:

- (8) the Revised Equal Standard of Living model proposed by the Canadian Bar Association,
- (9) the Revised Fixed Percentage proposal.

Early in the research process the Committee excluded two of the guidelines or formulas. The Flat Percentage with Reserve approach (5) was rejected because the reserve only benefits non-custodial parents. As well, the Income Equalization approach (6) was eliminated primarily because of theoretical problems. This left seven (nine original approaches minus two) for further consideration.

The results obtained when the four expenditure models were combined with the seven apportioning methods were also analyzed. The findings may be summarized as follows.

- In general, the application of all child-support formulas (except those that equalize standards of living), in combination with the four different economic models, resulted in non-custodial parents having higher standards of living than custodial parents and children.
- However, when both parties had low incomes (under \$15,000), the application of certain formulas and economic models resulted in custodial parents having slightly higher standards of living than non-custodial parents. This is largely due to the government subsidies currently available to low-income families, including child related tax credits.
- The extent of the gap between the standards of living of the two parents varied with the economic model and the child-support formula being used.
- Overall, the findings indicated that the percentage of child costs paid by the non-custodial parent would average anywhere from 50 percent to 100 percent of the actual post-divorce spending on the children, depending on the income category of the parties and the economic model and apportioning method used.

## **2.3 A COMPARISON OF THE SIMULATED AWARDS WITH CURRENT AWARDS**

A comparison of simulated awards generated by the formulas considered in the study with current awards produced the following general findings.

- On average, the simulated awards tended to be higher than current awards for families earning over \$60,000, but lower than current awards for families earning under \$30,000. Simulated awards also tended to be higher than current awards for large families but lower than current awards for small families.



- In all income categories, the Consumption model produced average awards that were significantly lower than current awards. The Adult Goods and the Blackorby/Donaldson models produced slightly higher average awards, and the Revised Extended Engel model produced awards that are slightly lower. However, if day care costs are added to the calculations using the Engel model, the awards were slightly higher than current awards.
- For all expenditure models and apportioning approaches, the gap between the parties' standards of living was more pronounced in cases where non-custodial parents earned a low income (under \$15,000) and where custodial parents earned a medium income (between \$15,000 and \$30,000) than when the situation was reversed. This is probably due to important government subsidies to low-income families through the tax and transfer systems.
- The Revised Fixed Percentage approach produced amounts that were slightly lower than current awards when the non-custodial parent earned a low (under \$15,000) and medium income (\$15,000 to \$30,000). However, when the non-custodial parent earned a high income (over \$30,000), the awards were much higher than current awards.
- Using the model proposed by the Canadian Bar Association, simulated awards were higher than current awards when the non-custodial parent earned a higher income than the custodial parent. However, as the income of the custodial parent surpassed that of the non-custodial parent, the awards rapidly decreased, and in some cases even became negative.

Based on the empirical results and the theoretical analysis of expenditure models and apportioning approaches, the Family Law Committee further rejected three approaches. The model suggested by the Canadian Bar Association was rejected primarily because it would be difficult to implement as the income and family composition of the parties change over time. The Income Shares approach was also rejected because the Committee preferred its sister model (Income Shares with Reserve), which includes a parental self-support reserve. Finally, the Family Law Committee rejected the Australian approach because it was excessively complicated in its implementation.

This left four apportioning approaches for further consideration:

- (a) Income Shares with Reserve;
- (b) Flat Percentage;<sup>22</sup>

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<sup>22</sup> Although this guideline does not have a self-support reserve, it was retained because of its simplicity, both in terms of the underlying theoretical concept and because of the ease of its practical application.

- (c) Surplus Shares (Revised Canadian "Delaware-Melson" model);
- (d) Revised Fixed Percentage.

### **SECTION 3: PHASE 3 OF THE RESEARCH - SELECTION OF THE PREFERRED FORMULA**

The objective of Phase 3 was to critically assess the findings of the research conducted in Phases 1 and 2 and to develop a preferred child-support formula.

As noted earlier, any child-support formula comprises an estimate of the expenditures on children plus a way of apportioning these "costs" between the two parents. Thus, the first task was to select an appropriate estimate of the expenditures on children. The second task was to develop a fair apportioning approach and final formula.

#### **3.1 THE PREFERRED EXPENDITURE MODEL**

##### **i) The Use of Equivalence Scales**

For any set of estimates of child expenditures there exists an associated equivalence scale. Equivalence scales are used as a tool to adjust family incomes to provide better comparisons of standards of living across households of different sizes and structures. For example, a family with children might have a higher income than a childless couple, but its needs are also greater. What income would the larger family need to be as well off as the childless couple? That is, what leaves the larger family "equivalent"?

The difference in the two families' incomes that will leave them equally well off can be expressed as a ratio, and the series of such ratios across all different types of families becomes a standardized equivalence scale. These scales are normally expressed in "adult equivalent units," with a single individual having the reference value of 1, and with families having values greater than 1. For example, by the Statistics Canada Low Income Measures equivalence scale, a couple is judged to require 1.4 times the income of a single adult to be equally well off.

It is possible to derive an equivalence scale for families with and without children from any set of child-cost estimates. For example, consider a hypothetical situation where it is determined that an adult with a child requires \$14,000 to have the same standard of living as an adult earning \$10,000 — that is, the child "costs" \$4,000.<sup>23</sup> The corresponding equivalence scale would be 1:1.4. (Thus, to have the same standard of living as a single adult, an adult plus one child requires 1.4 times the income of the single adult to be as well off as that adult.)

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<sup>23</sup> "Costs" is in quotation marks because the relevant economics literature uses a very particular notion of costs when making comparisons of well-being of this type. See the comments on this below.

This sort of direct relationship between estimated expenditures on children and equivalence scales holds generally — hence the inextricable link between the two concepts. It is important to note that the \$4,000 does not necessarily represent the *actual expenditures* on the child, and is instead the estimated amount of (gross) income that *would be* required to leave the two family units equally well off.<sup>24</sup>

## ii) Justification for the Preferred Expenditure Model

A number of sets of equivalence scales have been considered in this research. These include (in order): those produced by economists on contract with the Department of Justice Canada; that proposed by the Canadian Bar Association; the scales derived from the "basket of goods" approach (the implicit scale underlying social assistance payments in Canada); and the various scales that have been generated by Statistics Canada. A thorough description of all scales (save one, the 40/30 scale used by Statistics Canada) can be found in Finnie and Stripinis, 1993. The 40/30 scale is discussed below.

Although there are some differences across the various scales, it is interesting to note that, overall, the scales produce results which are not that disparate. Thus, in some sense, any of the scales could have been chosen and been acceptable. On the other hand, each approach was found to have problems in terms of theoretical underpinnings, application of the theory to the particular data available, or the numbers generated. Hence, the established Statistics Canada scales were turned to for this study.

Statistics Canada has had a long standing interest in estimating equivalence scales, and these have remained the most widely accepted norm for over two decades. More recently, as part of a public consultation process in 1989, it released a paper by M.C. Wolfson and J.M. Evans entitled *Statistics Canada's Low Income Cut-offs: Methodological Concerns and Possibilities - A Discussion Paper*.

This paper presented the Statistics Canada position that econometric research could not be relied on to come up with any definitive equivalence scale because of the difficult nature of the problem at both the theoretical and empirical levels. But the paper also proposed the "40/30" scale as a set of reasonable round numbers derived from empirical research and the public consultation process.

The 40/30 scale means that a couple is presumed to need 40 per cent more money to maintain the same standard of living as an individual living alone (the "40" in the 40/30 scale), while a first child adds another 30 percent to the family's costs (the "30" in the 40/30 scale). A family with a child thus requires 170 percent of the income of a single individual to be as well off, and the child's costs are judged to be  $30 \div 170$ , or 17.6 percent, of the

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<sup>24</sup> See Finnie and Stripinis, 1993 for further discussion of these issues. Note also that "costs" will vary across income levels, which simply reflects the commonsense notion that more money gets spent by adults and children alike when there is more income available. In other words, there is no notion of some fixed "costs" of a child. Finally, these costs can be expressed in terms of gross (pre-tax) or net (post-tax) income, or total expenditures, after savings are also taken into consideration.



family's total income. For example, if the family has an income of, say, \$50,000, the child is assumed to cost 17.6 percent of this amount, or \$8,823 (gross income). Which is to say that a couple with an income of \$50,000 – \$8,823 = \$41,176 would be as well off as the family with \$50,000.<sup>25</sup> Greater numbers of children of course imply greater costs, and the scale actually allows for as many as seven children and "40/30" is simply a shorthand expression for the entire scale for families of all sizes.

As a result of the public's response to the Committee's discussion paper and research report, and on the basis of consultation with officials from Statistics Canada and other leading economists, the recommended approach for this study was to use the 40/30 equivalence scale to estimate expenditures on children.

This scale actually generates higher estimates of child costs than most of the other scales considered, while also eliminating the false aura of precision which might come from accepting one particular economic model over others. The 40/30 scale also comes in both a pre-tax and post-tax version, and can be used for one- or two-parent families. This is useful because some of the apportioning rules are based on families' total pre-tax income, while the final standards of living are calculated on the post-award, post-tax incomes of the two families.

Because this equivalence scale provides an estimate of all expenditures on children, it is necessary to assume that the scale includes all costs such as daycare, special summer camps etc. As well, the scale applies to children of all age groups.

Although the "40/30" scale has been used by Statistics Canada as a possible equivalence scale to be used in the development of low income cut-offs, it is important to note that the use of the scale in determining expenditures on children does not suggest that children should live in poverty. Rather, the scale provides the means with which to estimate the expenditures on children or any family member, at a given income level whether or not they are at the poverty line. Thus, the costs of children are assumed to rise proportional to family income - as the family income increases, so do the costs attributed to the children.

On the basis of these findings, all further analysis by the Department of Justice Canada used the child-cost estimates based on the 40/30 scale, rather than the other econometric estimates obtained in Phase 1 of the research.

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<sup>25</sup> Another way to see this is to use the equivalence scales to calculate "adjusted income," which is a better measure of standard of living than total income because it takes into account the different needs of families of various sizes. This is done by simply dividing total family income by the "adult equivalent units," which in turn correspond to the 40/30 equivalence scale. Thus, the family with the child has an adjusted income of  $\$50,000 \div 1.7 = \$29,411$ , while the couple has  $\$41,176 \div 1.4 = \$29,411$  also. That is, the equivalence scale is used to calculate the costs of the child at a certain income level; these child costs are then subtracted from family income to give the "equivalent" income for two adults; the circle is then completed by computing the adjusted incomes of the two households using the equivalence scales.

### 3.2 DESCRIPTION OF THE FORMULAS

Following is a discussion of the four apportioning approaches - Income Shares with Reserve, Flat Percentage, Surplus Shares, and Revised Fixed Percentage - in combination with the selected expenditure model, the 40/30 scale.

*Note that Appendix A includes numerical examples of the calculations involved in each of the formulas using the 1992 Federal and Ontario Income Tax systems and the current inclusion and deduction tax treatments - i.e. pre - Thibaudeau.*

#### i) Income Shares with Reserve Formula

This approach to apportioning costs is predicated on the principle that the financial contribution of the non-custodial parent should be maintained at the level it would be if the family were still together. Proponents feel that this principle provides an appealing principle of fairness for determining child-support awards.

The mechanics of its implementation flow naturally from this fundamental precept. Specifically, the two parents' incomes are used to estimate expenditures on the children in a hypothetical "still-together" situation, and these estimated expenditures are then split in proportion to the parents' incomes. The custodial parent is presumed to meet his or her share in the course of living with the child, while the non-custodial parent's share becomes the child-support payment.<sup>26</sup>

It is important to understand that with the income-shares approach, expenditures on the children are estimated from established formulas — typically derived from econometric evidence — and do not necessarily reflect actual expenditures in the particular situation.

The step-by-step procedures used to implement the Income Shares approach are as follows. First, the parents' incomes are added together, and the 40/30 scale is applied to obtain estimates of the *gross* income deemed to be spent on the child (or children, henceforth understood). The next step is to convert these estimates of "gross income required for the expenditures" into the actual spending levels, which is done by applying the gross-income-to-expenditures conversion factors developed in Phase 1 of the research.<sup>27</sup> The two parents' incomes are then compared, and the estimated child costs are split in proportion to the relative shares of gross income.

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<sup>26</sup> See Finnie and Stripinis, 1993 for further discussion of the income-shares approach in general.

<sup>27</sup> See Shelley Phipps, *How Much Does It Cost to Raise Children in Canada?* Department of Justice Canada, 1991.



Next, one of two options is followed to take account of the income taxes to be paid on this amount.<sup>28</sup> By the "gross-up" method (see Appendix A, Step 5), the expenditure share is increased so that the total payment just covers the associated income taxes, based on the custodial parent's particular tax situation, leaving the custodial parent with the previously calculated sum net of taxes.<sup>29</sup>

The second method is to "pass through" the reduction in taxes paid by the non-custodial parent resulting from the deductibility of child-support payments. This passing through of the tax benefits actually works *against* the custodial family — that is, it lowers the net payment relative to when the awards are simply grossed up — in cases where the marginal tax rate faced by the custodial parent is greater than the marginal rate faced by the non-custodial parent.

This occurs when the custodial parent's income is relatively high. On the other hand, the pass-through method works in *favour* of the custodial family in cases where the custodial parent's marginal tax rate is *lower* than that of the non-custodial parent. This occurs when the custodial parent's income is relatively lower, which is the most common situation.<sup>30</sup>

Finally, the "basic minimum amount" or "reserve" aspect of the Income Shares approach adopted here (Step 6) is derived from the fact that non-custodial parents with incomes less than \$6,744 pay nothing. This is because \$6,744 is deemed to be the minimum income required for a single person to support him/herself, and below which there is no income available for a child-support award. (This is discussed in greater detail in the Surplus Shares section below). At incomes above \$6,744 there is a smooth "catching-up" to the amounts dictated by a straightforward application of the Income Shares formula, with the additional constraint that the total marginal tax rate (including the award) is never greater than 70 percent.

## **ii) Flat Percentage Formula**

The general approach here is simply to apply a flat rate to the non-custodial parent's income; the result of this calculation is the award. In particular, the custodial parent's income does not figure into the formula once the rate, or rates, have been determined.

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<sup>28</sup> Detailed tax calculations have been done to take into consideration the current tax system. An effective marginal tax rate of 70 percent has been included in the analysis to ensure a reasonable work incentive.

<sup>29</sup> It should be noted that if marginal tax rates are different for the two parents, this step could be seen as a departure from a pure income-shares approach. This is because the award no longer represents what the non-custodial parent would have spent on the child in the hypothetical still-together situation, and instead becomes directed at getting a certain amount of money into the custodial family. See Finnie and Stripinis, 1993, pp. 33-35.

<sup>30</sup> These steps regarding taxes would have to be revised if there were any major changes in the tax system. In particular, if there was a transfer in the deduction from the payer to the recipient, the step of either grossing up payments or passing through the tax reductions would be eliminated. See Finnie and Stripinis, 1993, pp.33-37, for further discussion of these issues.



In general, there is no single method for arriving at a set of fixed percentages. Usually, however, the percentages are based on research on child-rearing expenditures. This is similar to the Income Shares approach, the principal difference being that the appropriate amounts are then simplified into a set of fixed percentages of the non-custodial parent's income only.<sup>31</sup> The fixed percentages used here were determined in the following manner. First, expenditures on children were estimated as in the Income Shares approach, using the parents' combined incomes and the 40/30 equivalence scale. Next — and again like the Income Shares approach — these gross income requirements were translated into actual expenditure estimates using the aforementioned conversion rates. Third, income-share calculations were carried out, based on gross income. Fourth, the non-custodial parent's share — that is, the award under the Income Shares system — was compared to the non-custodial parent's (gross) income level, and the percentage of income the award represented was calculated. Fifth, these percentages were averaged over the entire database, and the resulting averages of 8.5 percent for one child, 14.2 percent for two children, 18.3 percent for three children, and 22 percent for four children, became the flat rate applied to the gross incomes of non-custodial parents.<sup>32</sup>

The last step (see case example) takes one of two forms — a gross-up or a pass-through relating to taxes. In the former, the award is increased by an amount equal to the custodial parent's tax payable on the award, so that he or she is left with the previously-determined net amount. In contrast, the pass-through method adds the resulting reduction in taxes payable by the non-custodial parent to the award.

The difference in these approaches in terms of who gains by the various income tax situations, has been discussed in the Income Shares section above.<sup>33</sup> What is worthy of emphasis here is that the gross-up requires knowing the custodial parent's income in each case — which is otherwise not required under a fixed percentages approach. The gross-up method thus largely negates one of the principle advantages of the fixed percentage system — namely, the simplicity which comes from its being dependent only on the income of the non-custodial parent.<sup>34</sup> Finally, in the variant currently under consideration, there is no reserve, meaning that non-custodial parents will be making payments no matter how low their income level. The implications of this are discussed in the following section on the Surplus Shares approach.

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<sup>31</sup> See Finnie and Stripinis, 1993, pp. 16-18.

<sup>32</sup> Note that the overall percentage — i.e., the formula — depends on the nature of the sample of divorces used here; a different database could generate different individual percentages and a different overall average.

<sup>33</sup> The bottom line is that lower-income custodial parents do relatively better with the pass-through method.

<sup>34</sup> See Finnie and Stripinis, 1993, pp. 23-28, for discussions of the advantages of a fixed percentage system in this instance.

### iii) Surplus Shares Formula

The Surplus Shares formula is fairly closely based on what has come to be known in the literature as the "Delaware-Melson" approach. Its identifying characteristics are, first, to establish a basic income reserve corresponding to the "minimum needs" of the parents, whereby those with incomes below this cut-off point are not expected to make a financial contribution to the maintenance of the child. The second aspect is that of establishing the basic needs of the child and the parents' share in the financial support of the child up to this minimum level in proportion to their incomes beyond their own reserves (i.e., basically an Income Shares approach in this range). The third defining characteristic is that once these basic reserve income levels are met for the child and both parents, the remaining income of the non-custodial parent is shared with the child at a constant rate (i.e., a Flat Percentage approach). Thus the Surplus Shares formula combines aspects of the Income Shares and Flat Percentage approaches, while fully integrating the concept of the "basic needs" of all parties involved into the formula.

The implementation of the Surplus Shares formula consists of the following procedures. First, the parents' reserves are established. The amount chosen was the personal deduction in the income tax system, on the grounds that society has implicitly decided that individuals with incomes below this cut-off point are judged to have not enough money to do more than attend to their own basic needs, while at incomes above this point they are expected to make a contribution (i.e., pay taxes).

This amount is \$6,280, which is also close to the average social assistance available to single persons across Canada — thus lending credibility to this choice as the minimum income needed to "survive".<sup>35</sup> If the non-custodial parent has an income lower than this, there is no child-support award.

Next, the 40/30 equivalence scale is used to calculate the child's (or children's) basic needs in a manner comparable to that used to establish the parents' minimums. This works out at \$2,512 for the first child, and \$1,880 for each subsequent child. With the tax gross-up method, these amounts are then transformed into the gross payments required to allow the custodial parent to pay the relevant taxes and be left with the indicated amounts *after* taxes. These grossed-up needs are then split between the parents in proportion to their post-tax/above-reserve incomes. Finally, once the child's basic needs are fully met in this manner, the remaining disposable income of the non-custodial parent — that is, income after the parental reserve, taxes, and payments to the child's basic needs are subtracted — is split with the child at a flat rate corresponding to the child's share in the total expenditures of the two family units.<sup>36</sup> This too is grossed-up, with care taken to ensure that the non-

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<sup>35</sup> The \$6,280 personal deduction pertains to the 1991 taxation year.

<sup>36</sup> That is,  $.4 \div 2.4$  for a situation with one child, corresponding to each parent having a weight of 100, and the first having a weight of 40 in the 40/30 scale,  $.7 \div 2.7$  for two children by the same logic, and so on.



custodial parent's reserve is not infringed upon. With the pass-through method, the gross-ups are simply replaced with the tax savings associated with the payments.<sup>37</sup>

#### **iv) Revised Fixed Percentage Formula**

This formula was developed by the consultants to the Family Law Committee. It is similar to the Flat Percentage approach but is based on an alternative set of principles and characteristics.

The starting point is the non-custodial parent's income. The first step is to calculate the award that would result in an equal sharing of the post-divorce costs of the child between the two parents if the custodial parent had the same level of income as the non-custodial parent — an award which most individuals would probably regard as fair. After all, if incomes are equal, why should not the child-cost shares also be equal?<sup>38</sup> Further, awards that equalize costs will also equalize standards of living, where this is measured by using the equivalences scales to adjust total incomes for family size.

Finally, the "equal shares" award will also be very close to the award that would be generated by an Income Shares approach at this point.<sup>39</sup> It should be noted that all calculations are based on net-of-tax comparisons, taking into account the post-tax costs of children and post-tax cost shares. The award is, however, calculated in pre-tax dollars — that is, the pre-tax amount required to be transferred to achieve the desired outcome.

The next step is to determine what should happen to the award with changes — say, an increase — in the custodial parent's income. By some approaches (including income shares in certain circumstances), the award would rise; by others, it would fall (as in other income-share situations and the equalized standard-of-living approach); while with still others it would not change at all (as in fixed-percentage systems). Thus we recognize that there is probably considerable disagreement over how awards should change with the custodial

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<sup>37</sup> These are iterative calculations, because the formula depends on post-tax income, which in turn changes with the amount of child-support payment made.

<sup>38</sup> Actually there are arguments that could potentially be made against this position. For example, some might say that the custodial parent also gives time, and therefore should not be required to contribute as much money. On the other hand, the non-custodial parent may also spend money directly on the child, and does not enjoy the benefits of living with the child, and one could argue that a lower payment could therefore be more appropriate. These issues are probably impossible to resolve, and are ignored here.

<sup>39</sup> The small difference is due to the income-shares approach using estimates of child costs based on the two-parent "non-divorce" situation, while the Revised Fixed Percentage approach hinges on estimates of the child costs in the post-divorce situation (i.e., in a one-parent family). In the two-parent situation, the child costs are calculated at a higher level of family income (i.e., the total of the two parents' incomes), which drives them up, while the marginal cost of the child might be lower due to the larger family and the economies of scale which underlie the 40/30 scale.



parent's income.<sup>40</sup> The Revised Fixed Percentage approach claims the middle ground common to all fixed-percentage systems: the award does not vary with the income of the custodial parent.

On the other hand, what happens to the award at higher levels of the *non*-custodial parent's income? As with all other approaches, it rises — but in its own unique fashion. At every level of income, the award is the amount that would share the costs of the child equally if the custodial parent had the same income as the non-custodial parent. (This is also the award that equalizes the standards of living of the two families, and is again very close to the income-shares award.) This exercise is repeated at all levels of income for the non-custodial parent: at each point, the award is the amount of transfer that would equalize the shares of the post-divorce costs of the child were the custodial parent to have the same income as the non-custodial parent. These awards are then calculated as percentages of the non-custodial parent's income, and rounded to give a schedule of payments that is close to a series of simple percentages.

To summarize, the Revised Fixed Percentage approach is based on using the non-custodial parent's income to first find an award which ought to be generally agreed upon (in the situation of similar incomes for the two parents), and then taking the middle ground of making the award independent of the custodial parent's income. While conceptually fairly straightforward, the resulting set of awards is actually based on a complicated set of calculations.

This is because child costs depend on the award, while the award depends on child costs, and so on. These feedback loops have to be worked through until the level of award which splits the child costs is found — where the costs are estimated at the total income in the custodial family, including the award itself.<sup>41</sup>

It should be recalled that as part of the construction of the final set of percentages, tax gross-ups are taken into account and embedded in the formula. That is, the awards are based on calculating the *gross* payment required to equate the *net* costs. With the awards then independent of the non-custodial parent's income, the implicit tax gross-ups come into play in an interesting fashion when the parents are in fact in different marginal tax brackets. For example, if the custodial parent has a substantially higher income than the non-custodial

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<sup>40</sup> Again, a good way of thinking about these questions is to imagine two families where the non-custodial parent has the same income. One could say that the custodial parent with the higher income should receive a higher award, since the child was used to a higher standard of living. On the other hand, perhaps the non-custodial parent should pay *less*, given that his or her custodial ex-spouse has a greater capacity to pay. It is also useful to think in terms of a dynamic situation: suppose the custodial parent's income *rises* — should the award *rise*, as it could under the Income Shares approach? Or should it drop, which is also possible? These are difficult questions to resolve.

<sup>41</sup> In many feedback systems like this, a "closed form" solution can be found if the functions are well behaved. This is, however, not the case here, due to the non-linearities introduced by the tax and transfer system.

parent — and is therefore in a higher marginal tax bracket — the award will not completely cover the tax consequences. On the other hand, this occurs because the custodial parent has a higher income, and is therefore better off. This also works in *favour* of the custodial parent in the majority of cases where his or her income is *lower* than that of the non-custodial parent. In such cases, the implicit tax gross-up means that taxes are *more* than covered, leaving extra money for the custodial family.

### 3.3 SELECTION OF THE FORMULA

The focus of this research was a comparison of current awards to the simulated awards generated by the four formulas under consideration. An examination was also undertaken of the standards of living of the parents and children prior to, and after, the separation/divorce.

The standard-of-living calculations were made using income-to-needs ratios (INRs), defined as the ratio of the family's total income to the low-income measure or cut-off point for that family. Although there is no so-called official poverty measure in Canada, Statistics Canada has developed low-income cut-offs that are commonly used as poverty measures. For the purposes of this analysis, the 40/30 low-income measures were used to generate income-to-needs ratios. "Needs" are thus taken to be the income needed to reach the low-income measure. The income-to-needs ratios above 1 reflect proportionally higher levels of well-being while ratios below 1 therefore indicate that the family is poor.

In summary, the Revised Fixed Percentage formula is the preferred formula. This decision was guided by the answers to the following four questions:

- i) Where are the problems in the current levels of child support?
- ii) How do the simulated awards generated by the four formulas compare with current awards?
- iii) How do the standards of living of the two households compare?
- iv) What impact do the formulas have on pulling people out of poverty?

Following is a summary of the answers to these questions.

#### **i) Where are the problems in the current levels of child support?**

The data suggest that on average, irrespective of the number of children in the family, when the non-custodial parent earns a medium income (\$15,000 - \$30,000) and the custodial parent earns a low (under \$15,000) and/or medium income, the non-custodial parent has a slightly higher standard of living than the custodial parent and children; in cases where the non-custodial parent earns a high income (over \$30,000), he or she has a much higher standard of living than the custodial parent; and when the non-custodial parent earns a low income, the custodial parent has a higher standard of living. When there are one or two children, the findings are similar.

Overall, however, the main problem seems to be where the non-custodial parent earns over \$30,000. In most of these cases, the average standard of living of the non-custodial parent is slightly lower in the post-separation situation than before the split, while it drops precipitously for the custodial parent. Although it could be argued that the higher-income spouse should retain some of the advantages of those higher earnings in the form of a higher post-separation standard of living few would argue that it should be at the expense of the children. It should also be recognized that the gap in the standard of living of the families should not be too disparate. To this end, the preferred formula should allow the non-custodial parent to benefit from his/her higher earning capacity, while at the same time it should also result in a fair sharing of the economic costs of divorce.

**ii) How do the simulated awards generated by the four formulas compare with current awards?**

A comparison of the simulated awards generated by the four formulas with the current awards reveals that none of the formulas generate amounts that are higher than current awards in situations where the non-custodial parent earns under \$15,000. However, when the non-custodial parent earns over \$30,000, the formula-generated awards are on average, significantly higher than the current awards. Changes in the level of awards in cases where the non-custodial parent earns between \$15,000 and \$30,000 are mixed.

A comparison of mean award levels across all income categories and number of children indicates that the Revised Fixed Percentage formula generates the highest awards overall and results in an average increase over current awards of 32 percent. Following is a summary of the impact of the other formulas.

- The Surplus Shares formula with a gross-up for taxes would raise awards on average by 9 percent.
- The Surplus Shares formula with a passing-on of the benefit would raise awards on average by 17 percent.
- The Income Shares with Reserve formula with a gross-up for taxes would lower awards on average by 4 percent.
- The Income Shares with Reserve formula with a passing-on of the benefit would raise awards on average by 10 percent.
- The Flat Percentage formula with a gross-up for taxes would raise awards on average by 20 percent.
- The Flat Percentage formula with a passing-on of the benefit would raise awards on average by 24 percent.



**iii) How do the standards of living of each of the households compare?**

Although it was not the intent of this project to find a formula that equalizes standards of living, an analysis was made of the impact of the various formulas on the gap in the income-to-needs ratios of the custodial and non-custodial parents, while taking into account the relevant incomes of both parties.

An examination of cases in which the non-custodial parent earns under \$15,000 indicated that all formulas generally reduce the gap between the standard of living in the non-custodial and custodial households. The same general pattern also holds true when the non-custodial parent earns over \$30,000. In these cases, however, the reduction in the gap is more dramatic. In cases where the non-custodial parent earns a medium income (between \$15,000 and \$30,000), the results are mixed.

Of the formulas considered, the Revised Fixed Percentage is the most effective in reducing the gap in standards of living in cases where the non-custodial parent earns over \$30,000. Although the application of this formula would result in a decrease in the current levels of awards when the non-custodial parent earns under \$15,000, this result could be modified depending on the policy on low-income families.

**iv) What impact do the formulas have on pulling people out of poverty?**

It is important to note that no formula comes close to eliminating poverty because many families are close to, or in poverty, before the divorce, and the loss of economies of scale makes things even worse after the separation. Moreover, the Family Law Committee recognizes that families on social assistance will only receive a benefit from increased child support levels where the increase is high enough to take them off social assistance completely since the child support orders are assigned to the provinces and territories.

An examination of the effect of various formulas on the number of people who earned income and were lifted out of poverty indicated that, even though average awards are higher with the formulas and they leave fewer non-custodial parents in poverty, some formulas actually result in an increase in the number of custodial parents in poverty. Overall, however, the Revised Fixed Percentage formula leaves the fewest people (mother, father, and children) in poverty. In the current award database, 718 people were living in poverty (after awards and taxes were accounted for).<sup>42</sup> The Revised Fixed Percentage formula, however, reduces the number of people who earn income including non-custodial parents in poverty by approximately 15 percent (from 718 to 608). An examination of the effect of this formula in reducing the number of households (16%) and the number of children (15%) in poverty produces similar results.

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<sup>42</sup> The income-to-needs ratios were developed using the 1991 Low Income Cut-offs provided by Statistics Canada.

In summary, the Revised Fixed Percentage formula has a number of advantages in terms of the empirical findings.

First, where low-income non-custodial parents tend to be at very low standards of living under the current award system, their burdens are relaxed more with the Revised Fixed Percentage formula than with other formulas, and their well-being is brought closer to that of the custodial households.

Second, as it is assumed that high-income non-custodial parents could pay *more* support, the Revised Fixed Percentage formula raises awards more than any of the other formulas in these cases.

Third, in cases where both parties earn an income the Revised Fixed Percentage formula does a reasonable job of cutting into poverty in both types of households.

Fourth, this method generally results in awards that are reasonable under all income situations, and nowhere does it generate outcomes that are aberrant.

Finally, the formula is easy to implement and administer.

### **3.3.1 MODIFICATIONS TO THE REVISED FIXED PERCENTAGE FORMULA**

As indicated above, the Revised Fixed Percentage formula produces significant increases in levels of child support, particularly in cases when the non-custodial parent earns over \$30,000 a year. As well, in this income category, there is a relatively large discrepancy in the custodial and non-custodial parents's standards of living following the family breakdown - the standard of living of the custodial parent and child was generally lower, on average, than that of the non-custodial parent.

However, in cases where both parent's incomes are below \$20,000 per year, the application of the formula produces a substantial decrease in the levels of child support relative to current levels. On the other hand, it should be understood that at these lower income levels, the government offers important subsidies to custodial parents which, in fact, leave them at a higher standard of living than non-custodial parents earning similar incomes. By equalizing the standards of living of the two parents in this income category, the government subsidies to assist children in low income families are taken into account by the Revised Fixed Percentage formula - and hence are reflected in the amount of the child support award.

Realizing that it might be unacceptable to reduce the current levels of child support in low income families, unless it could be shown that in those families the current awards are seldom paid, the Committee therefore asked the researchers to develop a variation of the formula which would not significantly decrease awards in cases where the non-custodial parent earns less than \$20,000 a year.

The main objective of the modifications to the Revised Fixed Percentage formula is therefore to generate higher awards in cases where the non-custodial parent earns under \$20,000 while at the same time preserving the basic principles underlying the Revised Fixed Percentage formula. As well, the awards generated using the "adjusted" Revised Fixed Percentage formula (hereafter referred to as the Revised Fixed Percentage - Low Income Adjusted) had to increase with the income of the non-custodial parent and number of children.

It should be noted that modifying the formula to produce awards which equal current awards in the low income range is somewhat problematic in that the sample used in the current award database has some weaknesses.

Firstly, it is not clear whether the database perfectly represents the population of divorces across income categories and therefore awards under the formula might be brought up to an unrepresentative average level.

Secondly, the research findings on current levels of child support indicate that there is not always a logical relationship between the gross income of the non-custodial parent, the amount of the award, and the number of children. Consider the case of a non-custodial parent who has a gross yearly income of \$8,000 and has been ordered to pay \$5,000 in child support. At face value, the award looks quite high relative to the gross income. However, there might be certain exceptional factors which could justify such an award, such as the non-custodial parent living in his parental home and not paying rent and lodging. The research database does not contain descriptive information on the "facts" of the case, and as a result it is very difficult to determine whether or not the award is reasonable. In the absence of this information, it is difficult to ascertain whether or not the database represents the true relationship between incomes and awards.

Finally, another problem faced by the researchers was that the formula imposes certain constraints on the awards which are not imposed on current judicial awards. In particular, under the proposed formula, someone earning under \$6,744 would not be required to pay child support. As well, the formula contains marginal tax constraints which are not present in the current system of determining child support awards. (For a discussion on the marginal tax rates imposed see Chapter 6 in "An Overview of the Research Program to Develop a Canadian Child Support Formula", Department of Justice, Canada.)

As a result of these constraints, any method of bringing average awards up to the current awards in the database by means of a formula, could lead to an over adjustment in the calculations.

Recognizing these inherent problems, the consultants developed a series of adjustments to the formula which conformed to the above stated objectives while at the same time tried to maintain the integrity of the analytic framework.



The construction of the Revised Fixed Percentage - Low Income Adjusted formula began with a plotting of current and Revised Fixed Percentage awards against non-custodial parent's income and finding the points where the two sets of awards crossed over, with this done separately by the number of children and province. This produced a common cut-point of about \$20,000. Awards above this level were untouched, while those below this point were modified.

The consultants then turned to the fundamental principles of the Revised Fixed Percentage formula to construct the adjustment. Recall that the Revised Fixed Percentage formula is based upon the premise of setting awards so that the two households' standards of living are equated where both parents have the same income, with this amount being the award *regardless* of the level of the custodial parent's income.

The adjustment then came in the form of shifting the ratio of well-being from equality of the two households towards a favouring of the custodial household — resulting in higher awards. To ensure a smooth integration between the awards generated by the adjusted formula and the awards generated by the original formula, the adjustment had to be zero at the cross-over points (ie. \$20,000). It was therefore decided to construct the adjustments in the ratios of well-being so that they were the requisite zero at the cross-over points, and progressively greater at lower income levels (down to the reserve level of \$6,744, below which it has been decided that awards should be zero). That is, the adjustment increases in a linear fashion as one moves to lower levels of non-custodial parent's income, meaning that the lowest awards were adjusted the most.

As well, an additional criterion was imposed which ensured that the marginal effective tax rates were not greater than 100 percent.

Ultimately, the solution was found by trying different adjustment factors and comparing the resulting awards against current awards in the sample. The procedure was stopped when the awards under the adjusted formula approximated the level of current awards in the relevant range (below \$20,000). This yielded maximum ratios of custodial to non-custodial household of 1.22 in the case of one child, and 1.02 in the case of two children. There was no adjustment required for the cases involving three and four children because the awards generated by the Revised Fixed Percentage formula were, on average, already as high and in some cases higher than, current awards in the sample.

Overall, it was methodologically impossible to generate a formula that produced awards that equalled current levels of child support while still maintaining a logical progression in award levels by income category and by number of children. The resulting adjustments to the Revised Fixed Percentage formula were the best possible given the methodological constraints imposed by the data.

### **i) Results from Modifying the Formula**

As indicated earlier, in the case of one or two children, the Revised Fixed Percentage formula produces awards which are considerably below current actual awards in cases

where both the custodial and non-custodial parent earn below \$15,000. In contrast, the Revised Fixed Percentage- Low Income Adjusted formula produces awards which are higher than the Revised Fixed Percentage amounts, although they are still slightly below the average current awards. When there are two children the awards generated using the Revised Fixed Percentage -Low Income Adjusted formula are slightly above current levels of child support.

In cases where the non-custodial parent earns between \$15,000 and \$30,000, a comparison of the awards generated using the Revised Fixed Percentage to the awards generated using the Revised Fixed Percentage-Low Income Adjusted formula indicates that the adjusted formula maintains, and in some cases even surpasses, current levels of child support.

A comparison of the income-to-needs ratios indicate that the adjustments to the Revised Fixed Percentage formula have only a slight impact on the standards of living of both households. The impact of the adjustment to the formula results in changes in the standards of living that are not nearly as dramatic as for the awards themselves, due to the fact that the awards do not comprise that high a percentage of income either side of the payment. Thus, for example in cases where both parents earn under \$15,000 and have one child, the custodial families go from an average INR of .86 using the Revised Fixed Percentage formula to .88 with the adjustment, while non-custodial parent go from .91 to .88.

However, in terms of presumably unwanted side effects, the non-custodial parent is driven down even further in the cases where he or she has less income than the custodial parent — in particular, in cases where the non-custodial parent earns under \$15,000 and the custodial parent earns between \$15,000 and \$30,000, the standard of living for the non-custodial parent goes from .96 (using the Revised Fixed Percentage formula) to .93 (with the adjustments), while the custodial family goes from 1.42 to 1.44.

Finally, an examination of the impact of the two formulas on poverty was undertaken. The research indicates that the poverty rate, as conventionally measured in terms of households, rises with the modifications. This is because the increased transfers drive more non-custodial parents into poverty than they deliver custodial families out of poverty. On the other hand, there is a moderate drop in both child poverty and number of people in poverty with the Revised Fixed Percentage - Low Income Adjusted formula.

### 3.3.2 CHANGES TO THE CURRENT TAX TREATMENT

As a result of the recent Thibaudeau case, the Committee asked the researchers to construct both the Revised Fixed Percentage and the Revised Fixed Percentage - Low Income Adjusted formulas under the assumption of a changed tax system whereby the current deduction/inclusion rule no longer applies. That is, it is to be assumed that the award is no longer a deduction for the payer and the custodial parent is not required to pay taxes on the amount received. See Appendix C for examples of the schedule of awards using the Revised Fixed Percentage - Low Income Adjusted formulas with the tax reversals.



i) **Revised Fixed Percentage Formula (No-Deduction/No-Inclusion)**

It should be recalled that the underlying principle of the Revised Fixed Percentage formula is that awards are set to equalize the standards of living of the two households when the two parents are at the same income level. The award produced for each income level then becomes the award paid by all non-custodial parents earning a similar income, regardless of the custodial parent's actual income.

Setting awards as a constant gross amount in this way, and with the current tax deduction/inclusion rule in place, leads to different after-tax awards depending on the income of the custodial parent. The net amount of the award depends on the actual income level of the custodial parent and the taxes due on the award at different income levels. This is the mechanism by which the Revised Fixed Percentage formula distributes the benefits of the current inclusion/system between the two households.

One key characteristic of this approach is that where the custodial parent faces a lower income tax rate than the non-custodial parent, the current tax system works to the advantage of the divorced family as a whole, and, by using the formula, passes the greater part of the tax-derived benefit over to the custodial family.

Thus the majority of low-income custodial households have the potential to benefit from the current tax system under the Revised Fixed Percentage formula, and this same group will therefore lose from the reversal of the tax treatment unless compensated by other forms of tax subsidies.

On the other hand, where the custodial parent pays taxes at a *higher* rate than the non-custodial parent, the current system works to the *disadvantage* of the divorced families, and in a symmetrical fashion, families in this situation will in turn *benefit* from the reversal of the current deduction/inclusion system.

Thus the gains and losses from the reversal of the tax system are fairly easy to predict: relatively low-income custodial families will be hurt by the reversal (unless other tax subsidies are provided), while higher-income custodial families are likely to gain.

The actual results conform to expectations. In cases where the custodial parents earn under \$15,000 per year, the current average base award (after tax) in all cases is \$1,332 per year. Using the Revised Fixed Percentage - no-deduction/ no-inclusion formula, the base award is \$807, down considerably from the \$948 obtained with the Revised Fixed Percentage - deduction/inclusion formula. Awards actually drop most where the non-custodial parent earns **over** \$15,000 and the custodial parent earns **under** \$15,000. On the other hand, there are a number of people who gain under the tax reversal. In cases where both parents earn over \$15,000 and under \$30,000 the award using the Revised Fixed Percentage - deduction/inclusion formula is \$2,679 as compared to \$2,717 using the no-deduction/no-inclusion version. (The current base award is \$2,702)



With the cases in the database heavily weighted towards families in the low income categories and where the non-custodial parent has a greater income than the custodial parent, overall average award levels drop significantly under the assumption of the elimination of the deduction/inclusion provision. That is, under the tax revision, child support awards would be, on average, lower than under the Revised Fixed Percentage using the current tax system. However, the base average award would, in general, still be higher than current child support levels. It should be noted, that unless the current subsidies are passed on to low income parents, only the government stands to benefit.

The reason for these results is that the current deduction/inclusion system offers a *potential* benefit to the majority of divorced families, while the Revised Fixed Percentages formula ensures that this *potential* advantage is — in contrast to the current system of setting child support awards — indeed shared between the two households. In short, by eliminating the deduction/inclusion system there is less money to go around for divorced families, and both sides suffer - while government revenues obviously rise.

**ii) Revised Fixed Percentage - Low Income Adjustment (No - Deduction/ No-Inclusion)**

The Low Income Adjusted version of the formula under the alternative tax treatment i.e., eliminating the deduction/inclusion rule, was constructed in the same manner as with the original Revised Fixed Percentage formula. The only difference is that the current awards were used in after-tax values and awards were of course calculated in similar "net" or after-tax terms.

Again, awards and standards of living are generally lower with the elimination of the deduction/inclusion rule (but, with the exception of families under \$15,000, higher than current levels) for the same reasons cited above: the tax advantages of the current tax treatment no longer exist, leaving divorced families with less income to be shared out between the two households.

With less after-tax money to go around, it was more difficult to get awards under the Low Income Adjusted formula to come close to current levels — where, of course, the advantages of the current tax treatment hold. As a result, the top ratios are 1.22 for the case of one child and 1.02 for two children (they remain at 1.00 for three and four children, where awards are untouched). That is, in order to keep awards as close as possible to current levels, low-income non-custodial parents will be left at a standard of living which is 33% below the level of the custodial family. As well, many of these low-income non-custodial parents also face the maximum implicit tax rates of 65% for one child, 80% for two children, 90% for three children and 100% for four or more children.

On the other hand, the tax reversal, by itself, does not assist custodial families. The base amount of awards are lower with the Low Income Adjusted version of the Revised Fixed Percentage formula under the reversed tax treatment than they are under the original Revised Fixed Percentage formula. An examination of other income categories indicates that the greatest drops in child support occur in cases where the non-custodial parent is at a

relatively higher income level, and the custodial parent at a lower income level. Thus the elimination of the current deduction/inclusion system reduces awards in cases where parents earn low income, while helping, to some degree, those at higher incomes. It is important to note however, that the awards generated using the formula are higher than current levels - with the exception of the low-low income categories.

### **iii) Impact on People, Children and Households in Poverty**

In addition to examining the impact of the different tax treatments on the value of the award and standards of living, we also undertook an analysis of the impact on the number of households in which the custodial parent earned an income and continued to live in poverty. Using the current award database, the Revised Fixed Percentage - deduction/inclusion formula results in a 16% decrease in the number of children in poverty while the Revised Fixed Percentage - no-deduction/no-inclusion formula (without a replacement of the 300 million dollar subsidy) only results in a 2% decrease.

Using our database for individuals earning an income, the Revised Fixed Percentage- Low Income Adjusted - deduction/inclusion formula provides the greatest impact on reducing the number of children in poverty (19%). As well, the adjusted formula using the no-deduction/no-inclusion tax treatment without a replacement subsidy, only results in a 4% decrease in the number of children in poverty.

An examination of the number of households and number of people who earn an income show similar results - the adjusted formula with the reversed tax system and no subsidy, will slightly increase the number of households and people in poverty while the adjusted formula using the current tax treatment provides the greatest relief from poverty.

### **PART III**

## **POLICY JUSTIFICATION FOR ADOPTING THE PREFERRED FORMULA THROUGH AN EXAMINATION OF THE VARIOUS OBJECTIVES AND PRINCIPLES**

At the onset of the Child Support Project, Committee members formulated a number of objectives and principles which should apply to child support and which should be used in evaluating possible options. These objectives and principles were developed with regards to the current state of the law and in the context of possible future amendments to child support legislation.

The public consultation revealed a high level of support for these objectives and principles. Some individuals and organizations did suggest changes to their wording, but Family Law Committee members feel that they have received sufficient public support to use them in this analysis as originally drafted.

It should be noted that favouring one principle or objective over another could have guided the development of a child support formula. However, it would be impossible to develop a formula which perfectly respects every principle and objective. From a research perspective, the Revised Fixed Percentage Formula was identified as the preferred approach mainly because it offered the best solution to the problematic areas identified. The Committee agreed that the Revised Fixed Percentage represented the best formula from a policy perspective.

The other formulas which are also explained in Annex "A" and which will be discussed in this Annex are:

- the Income Shares with Reserve (gross-up)
- the Income Shares with Reserve (pass-benefit)
- the Flat Percentage (gross-up)
- the Flat Percentage (pass-benefit)
- the Surplus Shares (gross-up)
- the Surplus Shares (pass-benefit)

The Objectives and Principles read as follows:

#### **1. OBJECTIVES:**

1. YIELD ADEQUATE AND EQUITABLE LEVELS OF CHILD SUPPORT.
2. PRODUCE AMOUNTS WHICH ARE OBJECTIVELY DETERMINABLE, CONSISTENT AND PREDICTABLE.



3. ENSURE FLEXIBILITY TO ACCOUNT FOR A VARIETY OF CIRCUMSTANCES.
4. BE UNDERSTANDABLE AND INEXPENSIVE TO ADMINISTER.

## **2. PRINCIPLES:**

- # 1 PARENTS HAVE LEGAL RESPONSIBILITY FOR THE FINANCIAL SUPPORT OF THEIR CHILDREN.
- # 2 CHILD SUPPORT LEGISLATION SHOULD NOT DISTINGUISH BETWEEN THE PARENTS OR CHILDREN ON THE BASIS OF SEX.
- # 3 THE DETERMINATION OF CHILD SUPPORT SHOULD BE MADE WITHOUT REGARD TO THE MARITAL STATUS OF THE PARENTS.
- # 4 RESPONSIBILITY FOR THE FINANCIAL SUPPORT OF CHILDREN SHOULD BE IN PROPORTION TO THE MEANS OF EACH PARENT.
- # 5 IN DETERMINING THE MEANS OF EACH PARENT, HIS OR HER MINIMUM NEEDS SHOULD BE TAKEN INTO CONSIDERATION.
- # 6 LEVELS OF CHILD SUPPORT SHOULD BE ESTABLISHED IN RELATION TO PARENTAL MEANS.
- # 7 WHILE EACH CHILD OF A PARENT HAS AN EQUAL RIGHT TO SUPPORT, IN MULTIPLE FAMILY SITUATIONS THE INTERESTS OF ALL CHILDREN SHOULD BE CONSIDERED.
- # 8 THE DEVELOPMENT OF ANY NEW APPROACH TO THE DETERMINATION OF CHILD SUPPORT SHOULD MINIMIZE COLLATERAL EFFECTS (E.G. DISINCENTIVE TO REMARRIAGE, JOINT OR EXTENDED CUSTODY ARRANGEMENTS AND VOLUNTARY UNEMPLOYMENT OR UNDEREMPLOYMENT) TO THE EXTENT COMPATIBLE WITH THE OBLIGATION TO PAY CHILD SUPPORT.

### **OBJECTIVE #1 YIELD ADEQUATE AND EQUITABLE LEVELS OF CHILD SUPPORT.**

It is important to recognize, at the beginning of this analysis, the paramountcy of Objective #1. This objective addresses specifically the issue of the appropriateness of the quantum of awards generated by each formula. The Committee considers that if a formula does not yield adequate and equitable levels of child support, it should be eliminated although it may respect the other objectives and principles. Levels of child support were one of the dominant reasons for instigating this project. This objective will therefore be discussed in

greater length than the others. To do so we will examine separately the two criteria contained in this objective: adequate and equitable.

### **Adequate levels of child support:**

To determine whether the awards generated by a formula are adequate, one must look at the specific levels and using some acceptable measure, determine their adequacy. As explained in Part II, a data base of current child support awards in various court locations in Canada was developed. Income to needs ratios were developed for the cases contained in the data base to identify the discrepancies between standards of living of family members upon family breakdown.

The Committee did not set out to eliminate the disparity between standards of living of the two parents. The Committee fully recognized that it is difficult to establish what an appropriate disparity could be; some might think that higher awards are by definition better because they increase the well being of the child while others might think that the standards of living of the two families should be brought closer to each other out of a sense of fairness regarding the sharing of the costs across all parties. Still, others might feel that awards should leave the parents at standards of living which largely reflect their own earning capacities. It is the view of the Committee that if a given formula does not provide adequate relief to children whose non-custodial parents are in higher income categories<sup>43</sup>, it does not provide adequate levels of awards.

Significant discrepancies in standards of living between family members were found in all cases where non-custodial parents earned over \$30,000 a year (notwithstanding the income of the custodial parent). In these cases custodial parents and children's standards of living were much lower than that of the non-custodial parent. Where non-custodial parents earned between \$15,000 and \$29,999, very modest discrepancies were found between households. Where there were some discrepancies, the custodial parent earned under \$15,000 a year.

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<sup>43</sup> The research has indicated that where the income of each parent is between 0 and \$15,000 a year, custodial households generally had a higher standard of living than non-custodial households. This is probably due to the significant subsidies coming from the government at that income level.

Where parents had income levels between \$15,000 and \$30,000 the standards of living of both households were very similar. However, where non-custodial parents' income is over \$30,000, non-custodial parents always enjoyed a much higher standard of living than custodial parents and children notwithstanding the income of the custodial parent. This significant discrepancy also increased with the number of children in the custodial parent's household.

Where both parents earned<sup>44</sup> under \$15,000 a year, although all family members were living in poverty, custodial parents and children were found to live at a slightly higher standard of living than non-custodial parents. Presumably, the higher standard of living of the custodial household in this low income category is due to high levels of governmental subsidies.

An examination of the impact of the various formulas with regards to the standards of living of both households where the non-custodial parent earns over \$30,000 a year indicate that the Surplus Shares and Income Shares formula have very little impact on the standards of living of custodial parents and children. However, the Flat Percentage formula which passes on the tax benefit and the Revised Fixed Percentage formula both address, to different extent, the disparity in living standards.

The Revised Fixed Percentage produces considerably better results for children whose non-custodial parent earns over \$30,000. The research indicates that the Revised Fixed Percentage would have the potential to increase levels of child support by an average of 32% in that income category.

Notwithstanding this apparently generous increase in awards, it is important to remember that where non-custodial parents earn higher incomes than custodial parents, the children will always live at a lower standard of living.

For the above noted reasons, the Committee considers that the most adequate awards are produced through the Revised Fixed Percentage Formula.

### **Equitable levels of child support:**

To determine whether the results are equitable two different questions must be asked:

- (1) Is the economic evidence on the costs of raising children used within the formula adequate?
- (2) Are these costs being apportioned fairly between the two parents?

### **(1) Is the economic evidence on the costs of raising children used within the formula adequate?**

The Committee considers that the equivalency scale used in all of the formulas is adequate. The reader should refer to Annex "A" which provides a detailed explanation of the proposed equivalency scale and why it was preferred by economists.

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<sup>44</sup> If the parent is on social assistance the impact could be different if there is no payment or actual receipt of a child support award.



Part II also explains that this equivalency scale can use either the pre-separation or the post separation costs of children. The equivalency scale is referred to as the 40/30 scale. In summary, one (1.0) represents the expenditures for the first person in a household, .40 represents the expenditures for the second and .30 represents the expenditures for the third.

In using this equivalency scale, the Income Shares, and Flat Percentage formulas allow the first child the value he or she had in the pre-separation context: .30 as he or she was the third person in the household.

The Revised Fixed Percentage formula on the other hand, uses the same equivalency scale but considers the first child as the second individual in the household. The child is therefore attributed the value of .40 which represents the post-separation costs. The second child would have the value of .30. The Surplus Shares uses a combination of pre and post-separation costs.

The Committee believes that in the context of child support determinations, it is more equitable to use the post-separation costs of children.

It should also be noted that many respondents to the public consultation suggested that post-separation costs of children should be used and that it was basically unfair for children to continue to receive the same portion of parental income they were receiving while the family was together.

(2) Are these costs being apportioned fairly between the two parents?

The apportioning principles used in the various formulas are explained in detail in Annex "A".

In summary, the flat percentage and Income Shares formulas all apportion the pre-separation costs (.30) of the child between the two parents in proportion to their income. Although the flat percentage of income does not specifically use the custodial parent's income in the calculation of the award, a presumed contribution was taken into account in determining the established percentage. The Surplus Shares formula uses a combination of the pre and post separation costs of the child.

The Revised Fixed Percentage Formula, on the other hand, was developed using the post-separation costs of children. The formula was developed to take into account recommendations submitted in the public consultation and in particular by the Canadian Bar Association which recommended that the incomes of both households should be equalized upon separation or divorce.

The Family Law Committee had many concerns with regards to equalizing family's standards of living in every case after separation. However, members easily accepted the theory that where two parents had identical incomes, both household should have similar standards of living. This concept has been incorporated into the Revised Fixed % Formula. It is important to note that the proposed formula does not strive to equalize standards of

living. The proposed formula in fact only equalizes standards of living when both parents earn the same income.

As explained in more detail in Annex "A" the formula basically passes on money from the non-custodial parent to the custodial parent until, using an income to needs ratio and considering all tax implications, both parents and child have identical standards of living. The amount produced at a given income level is then used for all non-custodial parents with the same income as a measure of their capacity to pay.

Whenever the custodial parent has a lower income than the non-custodial parent, awards produced by the Revised Fixed Percentage formula will always provide some cushion against the decline in the child's standard of living that results from actually sharing in the standard of living of a lower income custodial parent. This concept is very similar to the principles contained in the Surplus Shares Formula in which the child shares in excess income over and above basic needs.

It could be argued that the presence of this element within the award provides a benefit to custodial parents. Some may even argue that this element contradicts the current state of the law with regards to child support. However, from looking at the intent of Paras v. Paras, this would be difficult to argue.

An important part of the Paras decision is as follows:

"Generally speaking, such a formula would tend to preserve a higher standard of living in the home in which the children are supported at the expense of some lessening of the standard of living to the other parent, thus creating indirectly a benefit to the parent who continues to support the children."<sup>45</sup>

From this comment, it is clear that Justice Kelly considered that the amount determined to care for the children should ensure, as much as possible, the protection of the children's standard of living. Justice Kelly also recognized that it is impossible to separate the standard of living of the children and that of the custodial parent. Some economists agree with this theory:

" In short, income and consumption is best thought of as being shared within a family, thus implying a single common standard of living for all the household members. (...)

The critical point is that child support payments should **not** be thought of as providing for spending on the child alone, or raising the child's well being in

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<sup>45</sup> Paras v. Paras (1971) 9 R.F.L. p. 332.

isolation to the custodial parent (and any other in the household). Instead, support payments should be seen as increasing the custodial family's **total** income and spending, and lifting the well-being of **all** members of that household commensurately.

A critic might respond that this is simply not how child support payments work, and that the money is in fact specifically targeted on the child and gets spent accordingly. But consistent with the preceding discussions, for the most part this is simply not possible, since most consumption of a family is inherently joint, and is in any event not how households would be likely to operate **even if** the separation of the child's consumption was possible."<sup>46</sup>

In general, after separation the standard of living of every family member will fall considerably due to loss of economies of scale. Our research (and others) has shown, however, that it is custodial parents (the majority of which are women) and children who stand to lose the most.

"These results paint a picture of divorce where, on average, women experience steep declines in economic well-being while men enjoy moderate increases. And while there is some recovery for women in the post-divorce years, three full years after the split they remain well below their pre-divorce levels, as well as the current levels of their ex-husbands."<sup>47</sup>

As well, recent sociological research indicates that following separation, men generally take on a new partner or spouse within six months of the breakdown, while women take up to three years to find a new partner. Re-partnering has a very positive impact on the standard of living of the parties.

Therefore, from a policy perspective, the cushion against the decline in the child's standard of living contained in the proposed formula is fully justified as it simply attempts to secure the child's pre-separation standard of living and brings it closer to that enjoyed by the non-custodial parent.

It is important to note that non-custodial parents with higher incomes than custodial parents will always live at a considerably higher standard of living than their children under any of the proposed formulas including the Revised Fixed Percentage Formula. The latter however, reduces the gap in the standards of living the most.

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<sup>46</sup> Ross Finnie, and Daniel Stripinis, The Economics of Child Support Guidelines, Cahier 9306, Departement d'Économique, Faculté des Sciences Sociales, Université Laval, April 1993, p.10-11.

<sup>47</sup> Ross Finnie, Women, Men, and the Economics Consequences of Divorce: Evidence from Canadian Longitudinal Data, Canadian Review of Sociology and Anthropology, Vol. XXX, No.2, pp. 228, May, 1993.



Considering the above analysis, the Committee concludes that the Revised Fixed Percentage Formula produces the most adequate levels of child support.

**OBJECTIVE # 2: PRODUCE AMOUNTS WHICH ARE OBJECTIVELY DETERMINABLE, CONSISTENT AND PREDICTABLE.**

Child support awards produced through all the formulas presented would be objectively determinable, consistent and predictable.

**OBJECTIVE #3: ENSURE FLEXIBILITY TO ACCOUNT FOR A VARIETY OF CIRCUMSTANCES.**

Any of the proposed methods of determining child support is sufficiently flexible to take into account a variety of circumstances.

**OBJECTIVE #4: BE UNDERSTANDABLE AND INEXPENSIVE TO ADMINISTER.**

This objective contains two criterion: the first "understandable" addresses the issues of how easily the formula can be explained and applied. The second addresses the cost implications of administering the formula.

**Understandable:**

With regards to the first criteria "understandable", its application to the different formulas would produce different results whether the formula is to be understood for implementation purposes by the general public or for its intricate details by a more interested or specialized public.

With regards to explaining the concepts behind the formulas the Revised Fixed Percentage and Surplus Shares formulas would be the most difficult to explain. The easiest would be the flat percentage followed by the Income Shares. It should be noted that although it is essential for the Committee to be comfortable in explaining the concepts behind the models such explanation would presumably only be provided to a specialized or interested public.

The suggestion in Objective #4 that the formula be "understandable", should also be considered with regards to how easily the formula can be understood by a public attempting to use the formula on a case by case basis.

A formula based only on non-custodial parents' income is much easier to use than an Income Shares or Surplus Shares Formula which has to consider the income of both parents. The Committee has developed three percentage of income formulas:

- the flat percentage with gross-up for taxes,
- the flat percentage which pass on the tax benefit, and
- the Revised fixed percentage which includes the taxes

The Revised Fixed Percentage formula produces amounts which include tax implications. Tables would be provided separately so that custodial parents can determine their own tax liability on the amount of the award. In that sense this formula would be somewhat easier to understand and apply than the other two which require two separate calculations, one for the child and one for the taxes.

The Income Shares would be somewhat more complex than the Flat Percentage to explain to a public attempting to determine child support awards and the Surplus Shares Formulas would be, by far the most difficult to explain.

As we have seen the "understandable" criteria can be interpreted in two ways: (1) understanding the concepts behind the model, and (2) understanding how to apply the model to a particular case.

It may be that simplicity of explaining the concepts behind the models has less value than simplicity of explaining how the formula applies to individuals. Rather, for an informed public, fairness, logic and equity should have more merit than simplicity. Of course, it would be essential that these concepts be understandable. However, for the formula to apply successfully, it would not be necessary for everyone to understand its intricate details.

On the other hand, it is very important that the preferred formula be simple to apply so that any individual required to pay child support can understand how the formula would apply to their particular case.

### **Ease of administering:**

The second issue addressed in this objective is that of the costs of administering a formula. Unless provinces and territories are considering the implementation of an administrative office for child support determinations, the costs of administering a formula would be minimum and limited to the production and update of the formula to be contained in the legislation. Any of the formula could be produced and updated without much difficulty.

The legislation would provide for the formula, and the parties, lawyers and judges would determine child support awards as they do currently, but with the assistance of the formula. For the parties, the formula may reduce their costs since it would considerably limit the uncertainty around the child support awards and would presumably reduce litigation around this issue.

**PRINCIPLE # 1     PARENTS HAVE LEGAL RESPONSIBILITY FOR THE  
FINANCIAL SUPPORT OF THEIR CHILDREN.**

This principle would be respected within every child support formula. Even though the Flat Percentage and Revised Fixed Formula do not specify the precise contribution of the custodial parent, it is implicit in the formulas that custodial parents must contribute to the needs of the children in proportion to their means.

**PRINCIPLE # 2     CHILD SUPPORT LEGISLATION SHOULD NOT  
DISTINGUISH BETWEEN THE PARENTS OR CHILDREN ON  
THE BASIS OF SEX.**

None of the formulas make such a distinction whether for the parents or for children.

**PRINCIPLE # 3     THE DETERMINATION OF CHILD SUPPORT SHOULD BE  
MADE WITHOUT REGARD TO THE MARITAL STATUS OF  
THE PARENTS.**

This principle was very important for the Family Law Committee in the creation of this joint project. The responsibility for child support is shared between the federal government for divorce cases and the provinces and territories for separation cases, common-law couples and paternity cases.

The Family Law Committee has presented earlier in this report different options for governments to consider in the examination of this issue.

**PRINCIPLE # 4     RESPONSIBILITY FOR THE FINANCIAL SUPPORT OF  
CHILDREN SHOULD BE IN PROPORTION TO THE MEANS  
OF EACH PARENT.**

Every child support formula produced by the Family Law Committee ensures that the responsibility for children is shared to some extent in proportion to the means of each parent. The Income Shares and Surplus Shares formulas specifically indicate the responsibility of each parent whereas the Flat Percentage and Revised Fixed Percentage formulas only indicate the amount for which the non-custodial parent is responsible.

It should be clear, however, that the Flat Percentage and Revised Fixed Percentage formula implicitly recognize that the custodial parent must also assume, in accordance with his or her means, a share of the children's costs and that this financial responsibility of the custodial parent has been taken into account in determining the share of the non-custodial parent. Therefore, every formula assumes that the custodial parent contributes a portion of the child's costs.



It should be noted that for all formulas, it is impossible to ensure that custodial parents contribute any amount to their children. However, in the Income Shares and Surplus Shares formula, the income of the custodial parent is an integral part of the formula. Of course, if a formula was adopted which did not specify the custodial parent's contribution, the material explaining the proposed approach should clearly indicate that custodial parents are also assumed to contribute a portion of their means.

**PRINCIPLE # 5     IN DETERMINING THE MEANS OF EACH PARENT, HIS OR HER MINIMUM NEEDS SHOULD BE TAKEN INTO CONSIDERATION.**

All formulas but the flat percentage specifically allow a self support reserve. The reserves specifically allow both parents to cover their minimum needs although it is generally recognized that at approximately \$7,000 it would be difficult for anyone to live on that amount. Consideration to a higher self support reserve (around \$15,000 to resemble the level of the poverty line) was given, but this produced situations where parents who used to provide for their children would not be required to pay child support.

The flat percentage formula does not allow for a specific reserve. However, the non-custodial parent will always retain a substantial share of his or her income.

All the formulas allow non-custodial parents to cover their basic minimum needs.

**PRINCIPLE # 6     LEVELS OF CHILD SUPPORT SHOULD BE ESTABLISHED IN RELATION TO PARENTAL MEANS.**

Every formula developed for the Committee produces levels of child support established in relation to parental means. The proposed formula results in an increase in child support in proportion to non-custodial parents' income. Custodial parents are also assumed to contribute a portion of their means.

**PRINCIPLE # 7     WHILE EACH CHILD OF A PARENT HAS AN EQUAL RIGHT TO SUPPORT, IN MULTIPLE FAMILY SITUATIONS THE INTERESTS OF ALL CHILDREN SHOULD BE CONSIDERED.**

This issue does not directly relate to that of the formula itself but to the policy issue of reconstituted families. As explained above in Section 2.11, a two-step approach has been devised which proposes to take into account, in an equitable manner, the interest of all children in multiple family situations.

**PRINCIPLE # 8     THE DEVELOPMENT OF ANY NEW APPROACH TO THE DETERMINATION OF CHILD SUPPORT SHOULD MINIMIZE COLLATERAL EFFECTS (I.E. DISINCENTIVE TO REMARRIAGE, JOINT OR EXTENDED CUSTODY ARRANGEMENTS AND VOLUNTARY UNEMPLOYMENT OR UNDEREMPLOYMENT) TO THE EXTENT COMPATIBLE WITH THE OBLIGATION TO PAY CHILD SUPPORT.**

The Committee considers that all the different formulas and the related proposals on issues of substance attempt to respect this principle. However, it may be that because the Revised Fixed Percentage formula produces the higher awards, that it would have a greater impact than the other formulas on spousal support awards, on custody disputes or on individuals leaving the work force for social assistance.

**OVERALL SUMMARY**

All of the different child support formulas respect most of the principles and objectives developed by the Family Law Committee. However, as explained above, Objective # 1 is considered the most important. It is the view of the Family Law Committee that the proposed Revised Fixed Percentage formula, in addition to respecting the other principles and objectives, also produces the most adequate and arguably the most equitable levels of child support. It should be noted that if there is a reversal of the tax system to a no deduction/no inclusion, implementation of the Revised Fixed Percentage formula without taxes could be considered.

*General reserve to the report from the province of Québec*

The Ministère de la Justice du Québec took part in the work of the Federal/Provincial/Territorial Family Law Committee's which led to the drafting of the report on child support.

From the outset, we have expressed concerns as to the advisability of seeking a single legislative solution applicable to all child support orders in Canada.

Even before a federal-provincial task force charged with studying this matter was formed, an interdepartmental committee had been set up in Québec to examine all aspects of this matter from the standpoint of provincial issues in the areas of justice, income security and family policy.

Even if the administrative and financial impact studies currently being conducted prove to be positive and no other obstacles stand in the way of introducing a child support formula, we believe that, particularly because of the impact that such a formula would have on the administration of justice in each province, it would be appropriate to let the provinces choose the child support formula that is best suited to the principles and rules they consider appropriate, and to let them decide on the modalities for the application of such a formula. This is the position that was clearly expressed by Québec's Minister of Justice at a recent meeting with his counterparts from the rest of Canada.

Only in this way will it be possible to adequately meet the particular needs of the various jurisdictions while taking into account the principles and values on which their social and family policies are founded, their income security programs, the interests of their citizens and the resources at their disposal.



## **APPENDIX "A"**

**CALCULATIONS FOR THE INCOME SHARES WITH RESERVE,  
FLAT PERCENTAGE, SURPLUS SHARES AND  
REVISED FIXED PERCENTAGE FORMULAS**



# Income Shares with Reserve Formula

*General Approach: Maintain the financial contribution of the non-custodial parent at the level it would be if the family were still together.*

## **Step 1: Determine the scale to be used for expenditures on children**

Expenditures on children are based on the costs within the family prior to the separation or divorce. These are determined using the 40/30 equivalence scales used by Statistics Canada and assigning the child the weight of the third person in the two-parent household.

The scale is as follows:

Single adults, 1.0

Single adult plus one other person in family, 1.4

Single adult plus two other persons in family, 1.7

Single adult plus three other persons in family, 2.0

## **Step 2: Determine pre-divorce/separation gross income requirements for the child**

Assume a two-parent family with one child, in which the income of the non-custodial parent is \$50,000 and the income of the custodial parent is \$30,000. In this case, the total family income is \$80,000.

Using the expenditure scales outlined above, the gross income requirements for the child are calculated using the child's weight and total family income. The child's weight is determined by subtracting the scale for a two-person household from the scale for a three-person household (i.e.,  $1.7 - 1.4 = 0.3$ ). The portion of income needed for the child is the weight for the child (0.3) divided by the weight for a three-person household (1.7). Therefore:

$$\$80,000 \times \frac{0.3}{1.7} = \$14,117.64$$



### Step 3: Translate gross income requirements into net expenditures

Given the current tax system in Canada, it is necessary to translate the gross income requirements into net expenditures. This is done using conversion factors based on data contained in the Statistics Canada FAMEX (Family Expenditure Survey) database. In this case, the gross expenditures of \$14,118 translate into net expenditures of \$6,494.<sup>1</sup>

### Step 4: Calculate the non-custodial parent's contribution using an Income Shares approach

The non-custodial parent's share of the award is calculated in proportion to his or her income as follows:

Non-custodial parent's share =

$$\frac{\text{Income of non-custodial parent}}{\text{Income of non-custodial parent} + \text{income of custodial parent}} \times \text{net expenditures}$$

$$= \frac{\$50,000}{\$30,000 + \$50,000} \times \$6,494$$

$$= \$3,893.12$$

### Step 5: Determine the tax consequences

If the award is grossed up to reflect the tax consequences of the award to the custodial parent, the base award increases by \$3,825, and the final award is therefore \$7,718. If, on the other hand, the award is increased to reflect the non-custodial parent's tax deduction, the passed-on benefit is \$3,338, resulting in a final award of \$7,231.

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<sup>1</sup> This example used the conversion factor of 0.46 for family incomes over \$60,000. See Chapter 4, footnote 28 for more information about gross-income-to-expenditures conversion factors.

**Step 6: Apply the basic personal amount**

The basic personal amount or self-support reserve is based on the principle that parents with incomes of \$6,744 or less should not be required to pay child support, since this is the amount deemed to be the minimum income required for a single person to support him- or herself. Once the award and tax consequences are calculated, the total amount is deducted from the gross income of the non-custodial parent to determine the remaining income left to that parent. If the income remaining is below \$6,744, the non-custodial parent is not required to pay an award. Any income remaining above the minimum of \$6,744 is considered to be available for child support; however, the amount is subject to a 60 percent marginal tax rate.

In this scenario, the non-custodial parent is left with much more than the basic personal amount of \$6,744 and therefore will have income available for child support.

## Flat Percentage Formula

**General Approach:** *Apply a flat rate to the non-custodial parent's income.*

### BASIC DETERMINATION OF THE FLAT PERCENTAGE:

In order to determine the percentages that would be used in a flat percentage formula, it is first necessary to complete a series of calculations using simulations of families of many different sizes and income levels. The following calculations are performed on all simulations:

#### Step 1: Determine scale to be used for expenditures on children

In this formula, estimated child costs are based on the costs within the family prior to the separation or divorce. These are determined using the 40/30 equivalence scale and assigning the child the weight of the third person in the two-parent household.

The scale is as follows:

Single adult, 1.0

Single adult plus one other person in family, 1.4

Single adult plus two other persons in family, 1.7

Single adult plus three other persons in family, 2.0

#### Step 2: Determine pre-divorce/separation gross income requirements for the child

Again, as an example, assume a two-parent family with one child, in which the income of the non-custodial parent is \$50,000 and the income of the custodial parent is \$30,000. In this case, the total family income is \$80,000.

Using the expenditure scales outlined above, the gross income requirements for the child are calculated using the child's weight and total family income. The child's weight is determined by subtracting the scale for a two-person household from the scale for a three-person household (i.e.,  $1.7 - 1.4 = 0.3$ ). The portion of income needed for the child is the weight of the child (0.3) divided by the weight for a three-person household (1.7). Therefore, for this simulated family, the following calculation is performed:

$$\$80,000 \times \frac{0.3}{1.7} = \$14,117.64$$



### **Step 3: Translate gross income requirements into net expenditures**

Given the current tax system in Canada, it is necessary to translate the gross income requirements into net expenditures. Again, this is done for each simulation using conversion factors based on data contained in the Statistics Canada FAMEX database.<sup>2</sup>

### **Step 4: Calculate the non-custodial parent's contribution using an Income Shares approach**

The non-custodial parent's share of the award is calculated in proportion to his or her income as follows:

Non-custodial parent's share =

$$\frac{\text{Income of non-custodial parent}}{\text{Income of non-custodial parent} + \text{income of custodial parent}} \times \text{net expenditures}$$

### **Step 5: Express the non-custodial parent's contribution as a percentage of gross income**

The non-custodial parent's share of the award is divided by his or her gross income and the result is expressed as a percentage.

### **Step 6: Determine a flat percentage of non-custodial parent's gross income by family size**

A flat percentage is determined by repeating steps one to five for all combinations of income levels of the non-custodial and custodial parents within each family size. The average of all these simulated percentages becomes the flat percentage of non-custodial gross income within each family size. These average percentages per family size are:

For one child, 8.53 percent of gross income  
 For two children, 14.20 percent of gross income  
 For three children, 18.47 percent of gross income  
 For four children, 21.86 percent of gross income

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<sup>2</sup> See Chapter 4, footnote 28, for more information about gross-income-to-expenditures conversion factors.

**Step 7: Determine the award**

In the specific scenario outlined in Step 2, the non-custodial parent would be required to pay a base award of 8.5 percent (flat percentage for one child) times \$50,000 (non-custodial income) or \$4,250.

**Step 8: Determine the tax consequences**

If the award is grossed up to reflect the tax consequences of the award to the custodial parent, the base award increases by \$4,070 for a final award of \$8,320. If, on the other hand, the award is increased to reflect the non-custodial parent's tax deduction, the passed-on benefit results in a final award of \$7,245 (taxes are \$2,995).

## Surplus Shares Formula

*General Approach: Meet the basic needs of parents and child, then share any remaining income with the child.*

### Step 1: Establish the parents' basic personal amount

An amount of \$6,744, which represents the personal deduction for the 1992 tax year, has been selected for the basic personal amount. As well, this figure is close to the average social assistance available to single persons across Canada.

Again, assume a two-parent family with one child, in which the income of the non-custodial parent is \$50,000 and the income of custodial parent is \$30,000. In this case, the total family income is \$80,000. In this scenario, the calculations for the basic personal amounts are as follows:

Non-custodial parent:  $\$50,000 - \$6,744 = \$43,256$

Custodial parent:  $\$30,000 - \$6,744 = \$23,256$

### Step 2: Determine the scale to be used for expenditures on children

The 40/30 scale is used to calculate the amount necessary to meet the child's basic needs in a manner comparable to that used to establish the parents' personal amounts. For the example above, the calculation is 40 percent (the "40" in the 40/30 scale) of \$6,744 or \$2,698. Thus, the minimum amount for the child is \$2,698.

### Step 3: Gross up the child's basic minimum amount

Given the current tax system in Canada, it is necessary to gross up the amount allocated for the child's basic needs in order to accurately determine the non-custodial parent's remaining available income.<sup>3</sup>

In the above example, the gross-up on \$2,698 is \$2,800. Therefore, the grossed-up basic minimum amount for the child is \$5,498 (\$2,698 + 2,800).

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<sup>3</sup>

For the purposes of this example, grossing-up was used. The passing-on-the-benefit method could also be used.



**Step 4: Split the child's grossed-up basic minimum amount between the parents in proportion to their incomes after deduction of the basic personal amount and taxes**

For the above example, the calculations are as follows:

Disposable income of non-custodial parent

$$\begin{aligned}
 &= \text{Gross income} - \text{basic personal amount} - \text{personal federal \& provincial taxes} \\
 &= \$50,000 - \$6,744 - 16,006 \\
 &= \$27,250
 \end{aligned}$$

Disposable income of custodial parent

$$\begin{aligned}
 &= \text{Gross income} - \text{basic personal amount} - \text{personal federal \& provincial taxes} \\
 &= \$30,000 - \$6,744 - \$5,220 \\
 &= \$18,036
 \end{aligned}$$

The contribution of the non-custodial parent toward the grossed-up basic minimum amount for the child is calculated as follows:

$$\begin{aligned}
 &= \frac{\text{Disposable income of non-custodial parent}}{\text{Disposable income of non-custodial parent} + \text{Disposable income of custodial parent}} \times \text{grossed-up basic needs of child} \\
 &= \frac{\$27,250}{\$27,250 + 18,036} \times \$5,498 \\
 &= \$3,308
 \end{aligned}$$

**Step 5: Split the remaining disposable income of the non-custodial parent with the child**

The remaining disposable income of the non-custodial parent (i.e., gross income minus the parental basic personal amount, minus taxes, and minus share of the child's basic minimum amount) is split with the child at a flat rate that corresponds to the child's share in the total expenditures of the two family units, i.e., after divorce/separation.

Using the 40/30 equivalence scale:

Single adult, 1.0

Single adult plus one other person in family, 1.4

Single adult plus two other persons in family, 1.7

Single adult plus three other persons in family, 2.0

the child's share is calculated as follows:

$$\frac{(1.4 - 1.0)}{(1.0 + 1.4)} = \frac{0.4}{2.4} = 0.1667$$

The remaining disposable income of the non-custodial parent is:

{(Gross income less grossed-up basic minimum amount for the child) times 0.46 (conversion to net income)} less adult basic personal amount

$$= \{(\$50,000 - \$3,308) \times 0.46\} - 6,744$$

$$= \$14,734$$

In this scenario, the child's share of the non-custodial parent's remaining income is:

$$\frac{0.4}{2.4} = 1.667 \times \$14,734$$

$$= \$2,456$$

## Step 6: Gross up the child's share

The gross-up on the child's share of \$2,456 is \$2,590. Thus, the total grossed-up child's share is \$5,046.

## Step 7: Calculate the final award amount

The final award consists of the child's grossed-up basic minimum amount and the child's grossed-up share of the non-custodial parent's remaining income. In the scenario under consideration, the total award is calculated as follows:

Total base award = \$3,308 + \$5,046 = \$8,354

Of this award, \$4,081 is to compensate the custodial parent for her or his taxes.

If the tax impact of the award were calculated using the passing-on-the-benefit method rather than the grossing-up method, the total award would be \$7,023. (Basic minimum amount is \$2,767 {{1,623 base} plus 1,149 {passing on the benefit}}; the child's share is \$2,497; and the passed-on benefit is \$1,759)



## Revised Fixed Percentage Formula

*General Approach: Share the post-divorce costs of the child when non-custodial and custodial incomes are equal and use these amounts as the basis of a fixed percentage approach.*

### Step 1: Determine the scale to be used for expenditures on children

Expenditures on children are based on the costs within the single-parent family and determined using the 40/30 equivalence scale. With this formula, the child is given the weight of the first person in the single-parent household, while in the other formulas, the child is given the weight of the third person in the two-parent household.

The scale is as follows:

Single adult, 1.0  
 Single adult plus one other person in family, 1.4  
 Single adult plus two other persons in family, 1.7  
 Single adult plus three other persons in family, 2.0

### Step 2: Determine the award when incomes are equal

Assume a two-parent family with one child, in which the income of the non-custodial parent (A) is \$50,000 and the income of the custodial parent (B) is *also* \$50,000. The total family income is \$100,000.

The basic premise of the formula is that the income-to-needs ratios (INRs) of the two families should be the same because they both have the same income. Therefore, the INR of non-custodial parent (A) equals the INR of the custodial parent (B) plus the child.

The mathematical expression can be shown as follows:

$$\frac{\text{Disposable income of A}^4}{\text{Needs of A}} = \frac{\text{Disposable income of B}}{\text{Needs of B plus child}}$$

---

<sup>4</sup> Disposable income = gross income minus taxes.

Or it can be expressed as:

$$\frac{\text{Disposable income of A}}{\text{equivalence scale for one}} = \frac{\text{Disposable income of B}}{\text{equivalence scale for two}}$$

In the case of the hypothetical family described above, this translates to:

$$\frac{\$50,000 - \text{taxes} - \text{award}}{1.0} = \frac{\$50,000 - \text{taxes} + \text{award}}{1.4}$$

The amount of the contribution is the dollar value required to make these two households equal, that is the number of dollars A has to give to B to ensure that the INR of A is equal to the INR of B (including child). In this example, the dollar value required to make the INRs equal is \$8,458.

### Step 3: Apply the basic personal amount

In order to integrate the awards with the basic principles of the social welfare system, the formula includes a basic personal amount of \$6,744. Thus, no award is payable if the non-custodial parent earns this amount or less. Any income above this basic personal amount is available for the determination of an award with the restriction that the effective marginal tax rate is no more than 70 percent.

In this case, because the non-custodial parent earns more than \$6,744,<sup>5</sup> he or she has income available for the determination of child support.

### Step 4: Apply fixed percentage to all incomes

As for any Fixed Percentage approach, the calculation of the award is independent of the income of the custodial parent although the income of the custodial parent is considered in deriving the fixed percentage. Thus, the award calculated above applies to all non-custodial parents who are making \$50,000.

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<sup>5</sup> If the non-custodial parent earns, for example, \$6,754 (\$10 more than the basic personal amount), the award would be limited to 70 percent of the \$10 or \$7.

### **Important Features of the Revised Fixed Percentage Formula**

- Taxes are included in the calculation. In Step 1, the income-to-needs ratios include the tax consequences.
- Expenditures on children are calculated based on costs in single-parent families.
- The income of the custodial parent is not required for the calculations.



### *Comparison of Awards by Formula<sup>6</sup>*

*Case example: a one-child family in which the gross income of non-custodial parent is \$50,000 and the gross income of custodial parent is \$30,000.*

Award	Surplus Shares (\$)	Income Shares with Reserve (\$)	Flat % (\$)	Revised Fixed % (\$)
Base Award	4,273	3,907	4,250	N/A
Tax (gross-up)	4,081	3,825	4,070	N/A (equalized taxes)
Final Award	8,354	7,732	8,320	8,458
Base Award	4,120	3,322	4,250	N/A
Tax (passed-on benefit)	2,903	3,338	2,995	N/A
Final Award	7,023	6,660	7,245	8,458

<sup>6</sup>

The numbers in this table represent the computed values for each formula and will not always agree with those in the earlier text contained in this Appendix. This is because of the tax treatment. If the formula is using the passing-on-the-benefit method, this method is used throughout the calculations, and likewise for grossing up. This will result in slightly different base award amounts as reflected in this table.

## **APPENDIX "B"**

### **TABLE OF AWARDS UNDER THE REVISED FIXED PERCENTAGE LOW INCOME ADJUSTED FORMULA FOR 2 AND 3 CHILDREN**





**Child Support Award Amounts Based on  
Non-custodial Parent's Annual Gross Income Levels**

Province: ONTARIO  
 No. of children: Two  
 Formula: Revised Fixed Percentage - Low Income Adjusted  
 Tax Treatment: Current

Annual Gross Income		Annual Award					
from	to						
0	6744	the award is	0.00				
6745	6999	the award is	0.00	plus	70.8 %	of income over	6745
7000	7999	the award is	181.24	plus	70.5 %	of income over	7000
8000	8999	the award is	886.19	plus	57.6 %	of income over	8000
9000	9999	the award is	1462.50	plus	16.5 %	of income over	9000
10000	10999	the award is	1627.50	plus	16.0 %	of income over	10000
11000	11999	the award is	1787.50	plus	11.0 %	of income over	11000
12000	12999	the award is	1897.50	plus	19.5 %	of income over	12000
13000	13999	the award is	2092.50	plus	18.5 %	of income over	13000
14000	14999	the award is	2277.50	plus	18.0 %	of income over	14000
15000	15999	the award is	2457.50	plus	18.0 %	of income over	15000
16000	16999	the award is	2637.50	plus	18.0 %	of income over	16000
17000	17999	the award is	2817.50	plus	17.5 %	of income over	17000
18000	18999	the award is	2992.50	plus	17.5 %	of income over	18000
19000	19999	the award is	3167.50	plus	32.5 %	of income over	19000
20000	20999	the award is	3492.50	plus	40.0 %	of income over	20000
21000	21999	the award is	3892.50	plus	45.0 %	of income over	21000
22000	22999	the award is	4342.50	plus	43.0 %	of income over	22000
23000	23999	the award is	4772.50	plus	34.0 %	of income over	23000
24000	24999	the award is	5112.50	plus	42.5 %	of income over	24000
25000	25999	the award is	5537.50	plus	42.5 %	of income over	25000
26000	26999	the award is	5962.50	plus	42.0 %	of income over	26000
27000	27999	the award is	6382.50	plus	42.5 %	of income over	27000
28000	28999	the award is	6807.50	plus	40.5 %	of income over	28000
29000	29999	the award is	7212.50	plus	38.0 %	of income over	29000
30000	30999	the award is	7592.50	plus	37.0 %	of income over	30000
31000	31999	the award is	7962.50	plus	37.5 %	of income over	31000
32000	32999	the award is	8337.50	plus	37.5 %	of income over	32000
33000	33999	the award is	8712.50	plus	37.5 %	of income over	33000
34000	34999	the award is	9087.50	plus	34.5 %	of income over	34000
35000	35999	the award is	9432.50	plus	35.0 %	of income over	35000
36000	36999	the award is	9782.50	plus	34.5 %	of income over	36000
37000	37999	the award is	10127.50	plus	36.0 %	of income over	37000
38000	38999	the award is	10487.50	plus	33.5 %	of income over	38000
39000	39999	the award is	10822.50	plus	31.5 %	of income over	39000
40000	40999	the award is	11137.50	plus	32.0 %	of income over	40000
41000	41999	the award is	11457.50	plus	21.0 %	of income over	41000
42000	42999	the award is	11667.50	plus	24.0 %	of income over	42000
43000	43999	the award is	11907.50	plus	26.0 %	of income over	43000
44000	44999	the award is	12167.50	plus	26.0 %	of income over	44000
45000	45999	the award is	12427.50	plus	28.0 %	of income over	45000
46000	46999	the award is	12707.50	plus	30.5 %	of income over	46000
47000	47999	the award is	13012.50	plus	31.0 %	of income over	47000
48000	48999	the award is	13322.50	plus	31.0 %	of income over	48000
49000	49999	the award is	13632.50	plus	30.5 %	of income over	49000
50000	50999	the award is	13937.50	plus	31.0 %	of income over	50000

Ontario -Two Children, Revised Fixed Percentage-Low Income Adjusted Formula,  
Current tax Treatment (con't)

Annual Gross Income		Annual Award					
from	to						
51000	51999	<i>the award is</i>	14247.50	<i>plus</i>	31.5 %	<i>of income over</i>	51000
52000	52999	<i>the award is</i>	14562.50	<i>plus</i>	32.0 %	<i>of income over</i>	52000
53000	53999	<i>the award is</i>	14882.50	<i>plus</i>	32.0 %	<i>of income over</i>	53000
54000	54999	<i>the award is</i>	15202.50	<i>plus</i>	32.0 %	<i>of income over</i>	54000
55000	55999	<i>the award is</i>	15522.50	<i>plus</i>	32.0 %	<i>of income over</i>	55000
56000	56999	<i>the award is</i>	15842.50	<i>plus</i>	32.0 %	<i>of income over</i>	56000
57000	57999	<i>the award is</i>	16162.50	<i>plus</i>	32.0 %	<i>of income over</i>	57000
58000	58999	<i>the award is</i>	16482.50	<i>plus</i>	32.0 %	<i>of income over</i>	58000
59000	59999	<i>the award is</i>	16802.50	<i>plus</i>	32.0 %	<i>of income over</i>	59000
60000	60999	<i>the award is</i>	17122.50	<i>plus</i>	32.0 %	<i>of income over</i>	60000
61000	61999	<i>the award is</i>	17442.50	<i>plus</i>	32.0 %	<i>of income over</i>	61000
62000	62999	<i>the award is</i>	17762.50	<i>plus</i>	32.0 %	<i>of income over</i>	62000
63000	63999	<i>the award is</i>	18082.50	<i>plus</i>	32.0 %	<i>of income over</i>	63000
64000	64999	<i>the award is</i>	18402.50	<i>plus</i>	32.0 %	<i>of income over</i>	64000
65000	65999	<i>the award is</i>	18722.50	<i>plus</i>	32.5 %	<i>of income over</i>	65000
66000	66999	<i>the award is</i>	19047.50	<i>plus</i>	32.0 %	<i>of income over</i>	66000
67000	67999	<i>the award is</i>	19367.50	<i>plus</i>	33.0 %	<i>of income over</i>	67000
68000	68999	<i>the award is</i>	19697.50	<i>plus</i>	33.0 %	<i>of income over</i>	68000
69000	69999	<i>the award is</i>	20027.50	<i>plus</i>	33.0 %	<i>of income over</i>	69000
70000	70999	<i>the award is</i>	20357.50	<i>plus</i>	33.0 %	<i>of income over</i>	70000
71000	71999	<i>the award is</i>	20687.50	<i>plus</i>	33.0 %	<i>of income over</i>	71000
72000	72999	<i>the award is</i>	21017.50	<i>plus</i>	33.0 %	<i>of income over</i>	72000
73000	73999	<i>the award is</i>	21347.50	<i>plus</i>	33.0 %	<i>of income over</i>	73000
74000	74999	<i>the award is</i>	21677.50	<i>plus</i>	33.0 %	<i>of income over</i>	74000
75000	75999	<i>the award is</i>	22007.50	<i>plus</i>	33.0 %	<i>of income over</i>	75000
76000	76999	<i>the award is</i>	22337.50	<i>plus</i>	33.0 %	<i>of income over</i>	76000
77000	77999	<i>the award is</i>	22667.50	<i>plus</i>	32.5 %	<i>of income over</i>	77000
78000	78999	<i>the award is</i>	22992.50	<i>plus</i>	32.5 %	<i>of income over</i>	78000
79000	79999	<i>the award is</i>	23317.50	<i>plus</i>	32.0 %	<i>of income over</i>	79000
80000	80999	<i>the award is</i>	23637.50	<i>plus</i>	32.5 %	<i>of income over</i>	80000
81000	81999	<i>the award is</i>	23962.50	<i>plus</i>	32.0 %	<i>of income over</i>	81000
82000	82999	<i>the award is</i>	24282.50	<i>plus</i>	32.5 %	<i>of income over</i>	82000
83000	83999	<i>the award is</i>	24607.50	<i>plus</i>	32.0 %	<i>of income over</i>	83000
84000	84999	<i>the award is</i>	24927.50	<i>plus</i>	29.0 %	<i>of income over</i>	84000
85000	85999	<i>the award is</i>	25217.50	<i>plus</i>	28.0 %	<i>of income over</i>	85000
86000	86999	<i>the award is</i>	25497.50	<i>plus</i>	28.0 %	<i>of income over</i>	86000
87000	87999	<i>the award is</i>	25777.50	<i>plus</i>	28.5 %	<i>of income over</i>	87000
88000	88999	<i>the award is</i>	26062.50	<i>plus</i>	28.0 %	<i>of income over</i>	88000
89000	89999	<i>the award is</i>	26342.50	<i>plus</i>	28.0 %	<i>of income over</i>	89000
90000	90999	<i>the award is</i>	26622.50	<i>plus</i>	27.0 %	<i>of income over</i>	90000
91000	91999	<i>the award is</i>	26892.50	<i>plus</i>	27.0 %	<i>of income over</i>	91000
92000	92999	<i>the award is</i>	27162.50	<i>plus</i>	27.0 %	<i>of income over</i>	92000
93000	93999	<i>the award is</i>	27432.50	<i>plus</i>	27.0 %	<i>of income over</i>	93000
94000	94999	<i>the award is</i>	27702.50	<i>plus</i>	27.0 %	<i>of income over</i>	94000
95000	95999	<i>the award is</i>	27972.50	<i>plus</i>	27.0 %	<i>of income over</i>	95000
96000	96999	<i>the award is</i>	28242.50	<i>plus</i>	27.0 %	<i>of income over</i>	96000
97000	97999	<i>the award is</i>	28512.50	<i>plus</i>	26.5 %	<i>of income over</i>	97000
98000	98999	<i>the award is</i>	28777.50	<i>plus</i>	27.0 %	<i>of income over</i>	98000
99000	99999	<i>the award is</i>	29047.50	<i>plus</i>	27.0 %	<i>of income over</i>	99000



**Ontario -Two Children, Revised Fixed Percentage-Low Income Adjusted Formula,  
Current tax Treatment (con't)**

Annual Gross Income		Annual Award					
from	to						
100000	101000	<i>the award is</i>	29317.50	<i>plus</i>	27 %	<i>of income over</i>	100000
101000	102000	<i>the award is</i>	29587.50	<i>plus</i>	27 %	<i>of income over</i>	101000
102000	103000	<i>the award is</i>	29857.50	<i>plus</i>	27 %	<i>of income over</i>	102000
103000	104000	<i>the award is</i>	30127.50	<i>plus</i>	27 %	<i>of income over</i>	103000
104000	105000	<i>the award is</i>	30397.50	<i>plus</i>	27 %	<i>of income over</i>	104000
105000	106000	<i>the award is</i>	30667.50	<i>plus</i>	27 %	<i>of income over</i>	105000
106000	107000	<i>the award is</i>	30932.50	<i>plus</i>	27 %	<i>of income over</i>	106000
107000	108000	<i>the award is</i>	31202.50	<i>plus</i>	27 %	<i>of income over</i>	107000
108000	109000	<i>the award is</i>	31472.50	<i>plus</i>	27 %	<i>of income over</i>	108000
109000	110000	<i>the award is</i>	31742.50	<i>plus</i>	27 %	<i>of income over</i>	109000
110000	111000	<i>the award is</i>	32012.50	<i>plus</i>	27 %	<i>of income over</i>	110000
111000	112000	<i>the award is</i>	32282.50	<i>plus</i>	27 %	<i>of income over</i>	111000
112000	113000	<i>the award is</i>	32552.50	<i>plus</i>	27 %	<i>of income over</i>	112000
113000	114000	<i>the award is</i>	32822.50	<i>plus</i>	27 %	<i>of income over</i>	113000
114000	115000	<i>the award is</i>	33087.50	<i>plus</i>	27 %	<i>of income over</i>	114000
115000	116000	<i>the award is</i>	33357.50	<i>plus</i>	27 %	<i>of income over</i>	115000
116000	117000	<i>the award is</i>	33627.50	<i>plus</i>	27 %	<i>of income over</i>	116000
117000	118000	<i>the award is</i>	33897.50	<i>plus</i>	27 %	<i>of income over</i>	117000
118000	119000	<i>the award is</i>	34162.50	<i>plus</i>	26 %	<i>of income over</i>	118000
119000	120000	<i>the award is</i>	34422.50	<i>plus</i>	26 %	<i>of income over</i>	119000
120000	121000	<i>the award is</i>	34682.50	<i>plus</i>	26 %	<i>of income over</i>	120000
121000	122000	<i>the award is</i>	34937.50	<i>plus</i>	26 %	<i>of income over</i>	121000
122000	123000	<i>the award is</i>	35197.50	<i>plus</i>	26 %	<i>of income over</i>	122000
123000	124000	<i>the award is</i>	35457.50	<i>plus</i>	26 %	<i>of income over</i>	123000
124000	125000	<i>the award is</i>	35717.50	<i>plus</i>	26 %	<i>of income over</i>	124000
125000	126000	<i>the award is</i>	35977.50	<i>plus</i>	26 %	<i>of income over</i>	125000
126000	127000	<i>the award is</i>	36237.50	<i>plus</i>	26 %	<i>of income over</i>	126000
127000	128000	<i>the award is</i>	36497.50	<i>plus</i>	26 %	<i>of income over</i>	127000
128000	129000	<i>the award is</i>	36752.50	<i>plus</i>	26 %	<i>of income over</i>	128000
129000	130000	<i>the award is</i>	37012.50	<i>plus</i>	26 %	<i>of income over</i>	129000
130000	131000	<i>the award is</i>	37272.50	<i>plus</i>	26 %	<i>of income over</i>	130000
131000	132000	<i>the award is</i>	37532.50	<i>plus</i>	26 %	<i>of income over</i>	131000
132000	133000	<i>the award is</i>	37792.50	<i>plus</i>	26 %	<i>of income over</i>	132000
133000	134000	<i>the award is</i>	38052.50	<i>plus</i>	26 %	<i>of income over</i>	133000
134000	135000	<i>the award is</i>	38307.50	<i>plus</i>	26 %	<i>of income over</i>	134000
135000	136000	<i>the award is</i>	38567.50	<i>plus</i>	26 %	<i>of income over</i>	135000
136000	137000	<i>the award is</i>	38827.50	<i>plus</i>	26 %	<i>of income over</i>	136000
137000	138000	<i>the award is</i>	39087.50	<i>plus</i>	26 %	<i>of income over</i>	137000
138000	139000	<i>the award is</i>	39347.50	<i>plus</i>	26 %	<i>of income over</i>	138000
139000	140000	<i>the award is</i>	39607.50	<i>plus</i>	26 %	<i>of income over</i>	139000
140000	141000	<i>the award is</i>	39867.50	<i>plus</i>	26 %	<i>of income over</i>	140000
141000	142000	<i>the award is</i>	40122.50	<i>plus</i>	26 %	<i>of income over</i>	141000
142000	143000	<i>the award is</i>	40382.50	<i>plus</i>	26 %	<i>of income over</i>	142000
143000	144000	<i>the award is</i>	40642.50	<i>plus</i>	26 %	<i>of income over</i>	143000
144000	145000	<i>the award is</i>	40902.50	<i>plus</i>	26 %	<i>of income over</i>	144000
145000	146000	<i>the award is</i>	41162.50	<i>plus</i>	26 %	<i>of income over</i>	145000
146000	147000	<i>the award is</i>	41422.50	<i>plus</i>	26 %	<i>of income over</i>	146000
147000	148000	<i>the award is</i>	41682.50	<i>plus</i>	26 %	<i>of income over</i>	147000
148000	149000	<i>the award is</i>	41937.50	<i>plus</i>	26 %	<i>of income over</i>	148000
149000	149999	<i>the award is</i>	42197.50	<i>plus</i>	26 %	<i>of income over</i>	149000



### Child Support Award Amounts Based on Non-custodial Parent's Annual Gross Income Levels

Province: ONTARIO  
 No. of children: Three  
 Formula: Revised Fixed Percentage - Low Income Adjusted  
 Tax Treatment: Current

Annual Gross Income		Annual Award					
from	to						
0	6744	the award is	0.00				
6745	6999	the award is	0.00	plus	82.9 %	of income over	6745
7000	7999	the award is	212.27	plus	82.6 %	of income over	7000
8000	8999	the award is	1037.94	plus	76.0 %	of income over	8000
9000	9999	the award is	1797.50	plus	25.5 %	of income over	9000
10000	10999	the award is	2052.50	plus	32.5 %	of income over	10000
11000	11999	the award is	2377.50	plus	21.5 %	of income over	11000
12000	12999	the award is	2592.50	plus	20.5 %	of income over	12000
13000	13999	the award is	2797.50	plus	27.5 %	of income over	13000
14000	14999	the award is	3072.50	plus	26.5 %	of income over	14000
15000	15999	the award is	3337.50	plus	26.5 %	of income over	15000
16000	16999	the award is	3602.50	plus	26.0 %	of income over	16000
17000	17999	the award is	3862.50	plus	26.5 %	of income over	17000
18000	18999	the award is	4127.50	plus	26.0 %	of income over	18000
19000	19999	the award is	4387.50	plus	29.0 %	of income over	19000
20000	20999	the award is	4677.50	plus	32.5 %	of income over	20000
21000	21999	the award is	5002.50	plus	43.5 %	of income over	21000
22000	22999	the award is	5437.50	plus	60.0 %	of income over	22000
23000	23999	the award is	6037.50	plus	74.0 %	of income over	23000
24000	24999	the award is	6777.50	plus	64.0 %	of income over	24000
25000	25999	the award is	7417.50	plus	48.0 %	of income over	25000
26000	26999	the award is	7897.50	plus	48.5 %	of income over	26000
27000	27999	the award is	8382.50	plus	48.0 %	of income over	27000
28000	28999	the award is	8862.50	plus	45.5 %	of income over	28000
29000	29999	the award is	9317.50	plus	44.0 %	of income over	29000
30000	30999	the award is	9757.50	plus	44.0 %	of income over	30000
31000	31999	the award is	10197.50	plus	43.5 %	of income over	31000
32000	32999	the award is	10632.50	plus	44.0 %	of income over	32000
33000	33999	the award is	11072.50	plus	44.5 %	of income over	33000
34000	34999	the award is	11517.50	plus	44.5 %	of income over	34000
35000	35999	the award is	11962.50	plus	44.0 %	of income over	35000
36000	36999	the award is	12402.50	plus	44.5 %	of income over	36000
37000	37999	the award is	12847.50	plus	45.5 %	of income over	37000
38000	38999	the award is	13302.50	plus	43.0 %	of income over	38000
39000	39999	the award is	13732.50	plus	42.5 %	of income over	39000
40000	40999	the award is	14157.50	plus	42.5 %	of income over	40000
41000	41999	the award is	14582.50	plus	42.5 %	of income over	41000
42000	42999	the award is	15007.50	plus	45.0 %	of income over	42000
43000	43999	the award is	15457.50	plus	47.0 %	of income over	43000
44000	44999	the award is	15927.50	plus	45.5 %	of income over	44000
45000	45999	the award is	16382.50	plus	43.0 %	of income over	45000
46000	46999	the award is	16812.50	plus	40.5 %	of income over	46000
47000	47999	the award is	17217.50	plus	33.0 %	of income over	47000
48000	48999	the award is	17547.50	plus	37.5 %	of income over	48000
49000	49999	the award is	17922.50	plus	39.5 %	of income over	49000
50000	50999	the award is	18317.50	plus	39.0 %	of income over	50000

**Ontario -Three Children, Revised Fixed Percentage-Low Income Adjusted Formula,  
Current Tax Treatment (con't)**

Annual Gross Income		Annual Award					
from	to						
51000	51999	<i>the award is</i>	18707.50	<i>plus</i>	39.0 %	<i>of income over</i>	51000
52000	52999	<i>the award is</i>	19097.50	<i>plus</i>	39.0 %	<i>of income over</i>	52000
53000	53999	<i>the award is</i>	19487.50	<i>plus</i>	39.5 %	<i>of income over</i>	53000
54000	54999	<i>the award is</i>	19882.50	<i>plus</i>	39.0 %	<i>of income over</i>	54000
55000	55999	<i>the award is</i>	20272.50	<i>plus</i>	39.0 %	<i>of income over</i>	55000
56000	56999	<i>the award is</i>	20662.50	<i>plus</i>	39.0 %	<i>of income over</i>	56000
57000	57999	<i>the award is</i>	21052.50	<i>plus</i>	39.5 %	<i>of income over</i>	57000
58000	58999	<i>the award is</i>	21447.50	<i>plus</i>	39.0 %	<i>of income over</i>	58000
59000	59999	<i>the award is</i>	21837.50	<i>plus</i>	39.0 %	<i>of income over</i>	59000
60000	60999	<i>the award is</i>	22227.50	<i>plus</i>	39.0 %	<i>of income over</i>	60000
61000	61999	<i>the award is</i>	22617.50	<i>plus</i>	39.5 %	<i>of income over</i>	61000
62000	62999	<i>the award is</i>	23012.50	<i>plus</i>	39.5 %	<i>of income over</i>	62000
63000	63999	<i>the award is</i>	23407.50	<i>plus</i>	40.0 %	<i>of income over</i>	63000
64000	64999	<i>the award is</i>	23807.50	<i>plus</i>	40.0 %	<i>of income over</i>	64000
65000	65999	<i>the award is</i>	24207.50	<i>plus</i>	40.0 %	<i>of income over</i>	65000
66000	66999	<i>the award is</i>	24607.50	<i>plus</i>	40.0 %	<i>of income over</i>	66000
67000	67999	<i>the award is</i>	25007.50	<i>plus</i>	40.0 %	<i>of income over</i>	67000
68000	68999	<i>the award is</i>	25407.50	<i>plus</i>	40.0 %	<i>of income over</i>	68000
69000	69999	<i>the award is</i>	25807.50	<i>plus</i>	40.0 %	<i>of income over</i>	69000
70000	70999	<i>the award is</i>	26207.50	<i>plus</i>	40.0 %	<i>of income over</i>	70000
71000	71999	<i>the award is</i>	26607.50	<i>plus</i>	40.5 %	<i>of income over</i>	71000
72000	72999	<i>the award is</i>	27012.50	<i>plus</i>	40.0 %	<i>of income over</i>	72000
73000	73999	<i>the award is</i>	27412.50	<i>plus</i>	40.0 %	<i>of income over</i>	73000
74000	74999	<i>the award is</i>	27812.50	<i>plus</i>	40.0 %	<i>of income over</i>	74000
75000	75999	<i>the award is</i>	28212.50	<i>plus</i>	40.0 %	<i>of income over</i>	75000
76000	76999	<i>the award is</i>	28612.50	<i>plus</i>	40.0 %	<i>of income over</i>	76000
77000	77999	<i>the award is</i>	29012.50	<i>plus</i>	40.0 %	<i>of income over</i>	77000
78000	78999	<i>the award is</i>	29412.50	<i>plus</i>	40.0 %	<i>of income over</i>	78000
79000	79999	<i>the award is</i>	29812.50	<i>plus</i>	40.0 %	<i>of income over</i>	79000
80000	80999	<i>the award is</i>	30212.50	<i>plus</i>	40.0 %	<i>of income over</i>	80000
81000	81999	<i>the award is</i>	30612.50	<i>plus</i>	40.0 %	<i>of income over</i>	81000
82000	82999	<i>the award is</i>	31012.50	<i>plus</i>	40.0 %	<i>of income over</i>	82000
83000	83999	<i>the award is</i>	31412.50	<i>plus</i>	40.5 %	<i>of income over</i>	83000
84000	84999	<i>the award is</i>	31817.50	<i>plus</i>	40.0 %	<i>of income over</i>	84000
85000	85999	<i>the award is</i>	32217.50	<i>plus</i>	40.0 %	<i>of income over</i>	85000
86000	86999	<i>the award is</i>	32617.50	<i>plus</i>	40.0 %	<i>of income over</i>	86000
87000	87999	<i>the award is</i>	33017.50	<i>plus</i>	40.0 %	<i>of income over</i>	87000
88000	88999	<i>the award is</i>	33417.50	<i>plus</i>	39.0 %	<i>of income over</i>	88000
89000	89999	<i>the award is</i>	33807.50	<i>plus</i>	39.5 %	<i>of income over</i>	89000
90000	90999	<i>the award is</i>	34202.50	<i>plus</i>	39.5 %	<i>of income over</i>	90000
91000	91999	<i>the award is</i>	34597.50	<i>plus</i>	39.0 %	<i>of income over</i>	91000
92000	92999	<i>the award is</i>	34987.50	<i>plus</i>	39.5 %	<i>of income over</i>	92000
93000	93999	<i>the award is</i>	35382.50	<i>plus</i>	39.5 %	<i>of income over</i>	93000
94000	94999	<i>the award is</i>	35777.50	<i>plus</i>	39.0 %	<i>of income over</i>	94000
95000	95999	<i>the award is</i>	36167.50	<i>plus</i>	37.5 %	<i>of income over</i>	95000
96000	96999	<i>the award is</i>	36542.50	<i>plus</i>	35.5 %	<i>of income over</i>	96000
97000	97999	<i>the award is</i>	36897.50	<i>plus</i>	35.5 %	<i>of income over</i>	97000
98000	98999	<i>the award is</i>	37252.50	<i>plus</i>	35.5 %	<i>of income over</i>	98000
99000	99999	<i>the award is</i>	37607.50	<i>plus</i>	36.0 %	<i>of income over</i>	99000



Ontario -Three Children, Revised Fixed Percentage-Low Income Adjusted Formula,  
Current Tax Treatment (con't)

Annual Gross Income		Annual Award					
from	to						
100000	101000	<i>the award is</i>	37967.50	<i>plus</i>	35.5 %	<i>of income over</i>	100000
101000	102000	<i>the award is</i>	38322.50	<i>plus</i>	35 %	<i>of income over</i>	101000
102000	103000	<i>the award is</i>	38672.50	<i>plus</i>	34.5 %	<i>of income over</i>	102000
103000	104000	<i>the award is</i>	39017.50	<i>plus</i>	34.5 %	<i>of income over</i>	103000
104000	105000	<i>the award is</i>	39362.50	<i>plus</i>	34 %	<i>of income over</i>	104000
105000	106000	<i>the award is</i>	39702.50	<i>plus</i>	34.5 %	<i>of income over</i>	105000
106000	107000	<i>the award is</i>	40047.50	<i>plus</i>	34 %	<i>of income over</i>	106000
107000	108000	<i>the award is</i>	40387.50	<i>plus</i>	34.5 %	<i>of income over</i>	107000
108000	109000	<i>the award is</i>	40732.50	<i>plus</i>	34.5 %	<i>of income over</i>	108000
109000	110000	<i>the award is</i>	41077.50	<i>plus</i>	34 %	<i>of income over</i>	109000
110000	111000	<i>the award is</i>	41417.50	<i>plus</i>	34.5 %	<i>of income over</i>	110000
111000	112000	<i>the award is</i>	41762.50	<i>plus</i>	34 %	<i>of income over</i>	111000
112000	113000	<i>the award is</i>	42102.50	<i>plus</i>	34.5 %	<i>of income over</i>	112000
113000	114000	<i>the award is</i>	42447.50	<i>plus</i>	34 %	<i>of income over</i>	113000
114000	115000	<i>the award is</i>	42787.50	<i>plus</i>	34.5 %	<i>of income over</i>	114000
115000	116000	<i>the award is</i>	43132.50	<i>plus</i>	34.5 %	<i>of income over</i>	115000
116000	117000	<i>the award is</i>	43477.50	<i>plus</i>	34 %	<i>of income over</i>	116000
117000	118000	<i>the award is</i>	43817.50	<i>plus</i>	34.5 %	<i>of income over</i>	117000
118000	119000	<i>the award is</i>	44162.50	<i>plus</i>	34 %	<i>of income over</i>	118000
119000	120000	<i>the award is</i>	44502.50	<i>plus</i>	34.5 %	<i>of income over</i>	119000
120000	121000	<i>the award is</i>	44847.50	<i>plus</i>	34.5 %	<i>of income over</i>	120000
121000	122000	<i>the award is</i>	45192.50	<i>plus</i>	34 %	<i>of income over</i>	121000
122000	123000	<i>the award is</i>	45532.50	<i>plus</i>	34.5 %	<i>of income over</i>	122000
123000	124000	<i>the award is</i>	45877.50	<i>plus</i>	34 %	<i>of income over</i>	123000
124000	125000	<i>the award is</i>	46217.50	<i>plus</i>	34.5 %	<i>of income over</i>	124000
125000	126000	<i>the award is</i>	46562.50	<i>plus</i>	34.5 %	<i>of income over</i>	125000
126000	127000	<i>the award is</i>	46907.50	<i>plus</i>	34 %	<i>of income over</i>	126000
127000	128000	<i>the award is</i>	47247.50	<i>plus</i>	34.5 %	<i>of income over</i>	127000
128000	129000	<i>the award is</i>	47592.50	<i>plus</i>	34 %	<i>of income over</i>	128000
129000	130000	<i>the award is</i>	47932.50	<i>plus</i>	34.5 %	<i>of income over</i>	129000
130000	131000	<i>the award is</i>	48277.50	<i>plus</i>	34.5 %	<i>of income over</i>	130000
131000	132000	<i>the award is</i>	48622.50	<i>plus</i>	34 %	<i>of income over</i>	131000
132000	133000	<i>the award is</i>	48962.50	<i>plus</i>	34 %	<i>of income over</i>	132000
133000	134000	<i>the award is</i>	49302.50	<i>plus</i>	33.5 %	<i>of income over</i>	133000
134000	135000	<i>the award is</i>	49637.50	<i>plus</i>	33 %	<i>of income over</i>	134000
135000	136000	<i>the award is</i>	49967.50	<i>plus</i>	33.5 %	<i>of income over</i>	135000
136000	137000	<i>the award is</i>	50302.50	<i>plus</i>	33.5 %	<i>of income over</i>	136000
137000	138000	<i>the award is</i>	50637.50	<i>plus</i>	33 %	<i>of income over</i>	137000
138000	139000	<i>the award is</i>	50967.50	<i>plus</i>	33.5 %	<i>of income over</i>	138000
139000	140000	<i>the award is</i>	51302.50	<i>plus</i>	33.5 %	<i>of income over</i>	139000
140000	141000	<i>the award is</i>	51637.50	<i>plus</i>	33 %	<i>of income over</i>	140000
141000	142000	<i>the award is</i>	51967.50	<i>plus</i>	33.5 %	<i>of income over</i>	141000
142000	143000	<i>the award is</i>	52302.50	<i>plus</i>	33.5 %	<i>of income over</i>	142000
143000	144000	<i>the award is</i>	52637.50	<i>plus</i>	33 %	<i>of income over</i>	143000
144000	145000	<i>the award is</i>	52967.50	<i>plus</i>	33.5 %	<i>of income over</i>	144000
145000	146000	<i>the award is</i>	53302.50	<i>plus</i>	33.5 %	<i>of income over</i>	145000
146000	147000	<i>the award is</i>	53637.50	<i>plus</i>	33 %	<i>of income over</i>	146000
147000	148000	<i>the award is</i>	53967.50	<i>plus</i>	33.5 %	<i>of income over</i>	147000
148000	149000	<i>the award is</i>	54302.50	<i>plus</i>	33.5 %	<i>of income over</i>	148000
149000	149999	<i>the award is</i>	54637.50	<i>plus</i>	33 %	<i>of income over</i>	149000



## **APPENDIX "C"**

### **TABLE OF AWARDS UNDER THE REVISED FIXED PERCENT LOW INCOME ADJUSTED IN A NO DEDUCTION/NO INCLUSION SYSTEM FOR 1-3 CHILDREN**



**Child Support Award Amounts Based on  
Non-custodial Parent's Annual Gross Income Levels**

Province: ONTARIO  
 No. of children: One  
 Formula: Revised Fixed Percentage-Low Income Adjusted  
 Tax Treatment: Reversed

Annual Gross Income		Annual Award					
from	to						
0	6744	the award is	0.00				
6745	6999	the award is	0.00	plus	43.6 %	of income over	6745
7000	7999	the award is	111.58	plus	18.1 %	of income over	7000
8000	8999	the award is	292.50	plus	10.0 %	of income over	8000
9000	9999	the award is	392.50	plus	10.0 %	of income over	9000
10000	10999	the award is	492.50	plus	10.0 %	of income over	10000
11000	11999	the award is	592.50	plus	10.0 %	of income over	11000
12000	12999	the award is	692.50	plus	10.0 %	of income over	12000
13000	13999	the award is	792.50	plus	10.0 %	of income over	13000
14000	14999	the award is	892.50	plus	10.0 %	of income over	14000
15000	15999	the award is	992.50	plus	10.0 %	of income over	15000
16000	16999	the award is	1092.50	plus	10.0 %	of income over	16000
17000	17999	the award is	1192.50	plus	10.0 %	of income over	17000
18000	18999	the award is	1292.50	plus	10.0 %	of income over	18000
19000	19999	the award is	1392.50	plus	10.0 %	of income over	19000
20000	20999	the award is	1492.50	plus	25.0 %	of income over	20000
21000	21999	the award is	1742.50	plus	7.5 %	of income over	21000
22000	22999	the award is	1817.50	plus	11.5 %	of income over	22000
23000	23999	the award is	1932.50	plus	11.0 %	of income over	23000
24000	24999	the award is	2042.50	plus	12.0 %	of income over	24000
25000	25999	the award is	2162.50	plus	11.5 %	of income over	25000
26000	26999	the award is	2277.50	plus	12.5 %	of income over	26000
27000	27999	the award is	2402.50	plus	12.5 %	of income over	27000
28000	28999	the award is	2527.50	plus	12.5 %	of income over	28000
29000	29999	the award is	2652.50	plus	14.0 %	of income over	29000
30000	30999	the award is	2792.50	plus	12.0 %	of income over	30000
31000	31999	the award is	2912.50	plus	13.5 %	of income over	31000
32000	32999	the award is	3047.50	plus	14.5 %	of income over	32000
33000	33999	the award is	3192.50	plus	14.0 %	of income over	33000
34000	34999	the award is	3332.50	plus	11.5 %	of income over	34000
35000	35999	the award is	3447.50	plus	11.0 %	of income over	35000
36000	36999	the award is	3557.50	plus	12.0 %	of income over	36000
37000	37999	the award is	3677.50	plus	10.5 %	of income over	37000
38000	38999	the award is	3782.50	plus	10.0 %	of income over	38000
39000	39999	the award is	3882.50	plus	9.5 %	of income over	39000
40000	40999	the award is	3977.50	plus	10.0 %	of income over	40000
41000	41999	the award is	4077.50	plus	9.5 %	of income over	41000
42000	42999	the award is	4172.50	plus	10.0 %	of income over	42000
43000	43999	the award is	4272.50	plus	10.0 %	of income over	43000
44000	44999	the award is	4372.50	plus	9.5 %	of income over	44000
45000	45999	the award is	4467.50	plus	10.0 %	of income over	45000
46000	46999	the award is	4567.50	plus	9.5 %	of income over	46000
47000	47999	the award is	4662.50	plus	10.0 %	of income over	47000
48000	48999	the award is	4762.50	plus	9.5 %	of income over	48000
49000	49999	the award is	4857.50	plus	10.0 %	of income over	49000
50000	50999	the award is	4957.50	plus	9.5 %	of income over	50000



Ontario -One Child, Revised Fixed Percentage-Low Income Adjusted Formula,  
Reversed Tax Treatment (con't)

Annual Gross Income		Annual Award					
from	to						
51000	51999	<i>the award is</i>	5052.50	<i>plus</i>	10.0 %	<i>of income over</i>	51000
52000	52999	<i>the award is</i>	5152.50	<i>plus</i>	10.0 %	<i>of income over</i>	52000
53000	53999	<i>the award is</i>	5252.50	<i>plus</i>	9.5 %	<i>of income over</i>	53000
54000	54999	<i>the award is</i>	5347.50	<i>plus</i>	9.5 %	<i>of income over</i>	54000
55000	55999	<i>the award is</i>	5442.50	<i>plus</i>	9.0 %	<i>of income over</i>	55000
56000	56999	<i>the award is</i>	5532.50	<i>plus</i>	9.5 %	<i>of income over</i>	56000
57000	57999	<i>the award is</i>	5627.50	<i>plus</i>	9.5 %	<i>of income over</i>	57000
58000	58999	<i>the award is</i>	5722.50	<i>plus</i>	10.0 %	<i>of income over</i>	58000
59000	59999	<i>the award is</i>	5822.50	<i>plus</i>	9.0 %	<i>of income over</i>	59000
60000	60999	<i>the award is</i>	5912.50	<i>plus</i>	9.0 %	<i>of income over</i>	60000
61000	61999	<i>the award is</i>	6002.50	<i>plus</i>	9.0 %	<i>of income over</i>	61000
62000	62999	<i>the award is</i>	6092.50	<i>plus</i>	8.5 %	<i>of income over</i>	62000
63000	63999	<i>the award is</i>	6177.50	<i>plus</i>	8.5 %	<i>of income over</i>	63000
64000	64999	<i>the award is</i>	6262.50	<i>plus</i>	7.5 %	<i>of income over</i>	64000
65000	65999	<i>the award is</i>	6337.50	<i>plus</i>	8.0 %	<i>of income over</i>	65000
66000	66999	<i>the award is</i>	6417.50	<i>plus</i>	8.5 %	<i>of income over</i>	66000
67000	67999	<i>the award is</i>	6502.50	<i>plus</i>	9.0 %	<i>of income over</i>	67000
68000	68999	<i>the award is</i>	6592.50	<i>plus</i>	8.5 %	<i>of income over</i>	68000
69000	69999	<i>the award is</i>	6677.50	<i>plus</i>	8.5 %	<i>of income over</i>	69000
70000	70999	<i>the award is</i>	6762.50	<i>plus</i>	8.5 %	<i>of income over</i>	70000
71000	71999	<i>the award is</i>	6847.50	<i>plus</i>	8.5 %	<i>of income over</i>	71000
72000	72999	<i>the award is</i>	6932.50	<i>plus</i>	8.5 %	<i>of income over</i>	72000
73000	73999	<i>the award is</i>	7017.50	<i>plus</i>	8.5 %	<i>of income over</i>	73000
74000	74999	<i>the award is</i>	7102.50	<i>plus</i>	8.5 %	<i>of income over</i>	74000
75000	75999	<i>the award is</i>	7187.50	<i>plus</i>	8.5 %	<i>of income over</i>	75000
76000	76999	<i>the award is</i>	7272.50	<i>plus</i>	9.0 %	<i>of income over</i>	76000
77000	77999	<i>the award is</i>	7362.50	<i>plus</i>	8.5 %	<i>of income over</i>	77000
78000	78999	<i>the award is</i>	7447.50	<i>plus</i>	8.5 %	<i>of income over</i>	78000
79000	79999	<i>the award is</i>	7532.50	<i>plus</i>	8.5 %	<i>of income over</i>	79000
80000	80999	<i>the award is</i>	7617.50	<i>plus</i>	8.5 %	<i>of income over</i>	80000
81000	81999	<i>the award is</i>	7702.50	<i>plus</i>	8.5 %	<i>of income over</i>	81000
82000	82999	<i>the award is</i>	7787.50	<i>plus</i>	8.5 %	<i>of income over</i>	82000
83000	83999	<i>the award is</i>	7872.50	<i>plus</i>	8.5 %	<i>of income over</i>	83000
84000	84999	<i>the award is</i>	7957.50	<i>plus</i>	7.5 %	<i>of income over</i>	84000
85000	85999	<i>the award is</i>	8032.50	<i>plus</i>	8.0 %	<i>of income over</i>	85000
86000	86999	<i>the award is</i>	8112.50	<i>plus</i>	8.5 %	<i>of income over</i>	86000
87000	87999	<i>the award is</i>	8197.50	<i>plus</i>	8.5 %	<i>of income over</i>	87000
88000	88999	<i>the award is</i>	8282.50	<i>plus</i>	8.0 %	<i>of income over</i>	88000
89000	89999	<i>the award is</i>	8362.50	<i>plus</i>	8.5 %	<i>of income over</i>	89000
90000	90999	<i>the award is</i>	8447.50	<i>plus</i>	8.5 %	<i>of income over</i>	90000
91000	91999	<i>the award is</i>	8532.50	<i>plus</i>	8.5 %	<i>of income over</i>	91000
92000	92999	<i>the award is</i>	8617.50	<i>plus</i>	8.0 %	<i>of income over</i>	92000
93000	93999	<i>the award is</i>	8697.50	<i>plus</i>	8.5 %	<i>of income over</i>	93000
94000	94999	<i>the award is</i>	8782.50	<i>plus</i>	8.5 %	<i>of income over</i>	94000
95000	95999	<i>the award is</i>	8867.50	<i>plus</i>	8.5 %	<i>of income over</i>	95000
96000	96999	<i>the award is</i>	8952.50	<i>plus</i>	8.0 %	<i>of income over</i>	96000
97000	97999	<i>the award is</i>	9032.50	<i>plus</i>	8.5 %	<i>of income over</i>	97000
98000	98999	<i>the award is</i>	9117.50	<i>plus</i>	8.5 %	<i>of income over</i>	98000
99000	99999	<i>the award is</i>	9202.50	<i>plus</i>	8.0 %	<i>of income over</i>	99000

**Ontario -One Child, Revised Fixed Percentage-Low Income Adjusted Formula,  
Reversed Tax Treatment (con't)**

Annual Gross Income		Annual Award					
from	to						
100000	101000	the award is	9282.50	plus	8.5 %	of income over	100000
101000	102000	the award is	9367.50	plus	8.5 %	of income over	101000
102000	103000	the award is	9452.50	plus	8.5 %	of income over	102000
103000	104000	the award is	9537.50	plus	8 %	of income over	103000
104000	105000	the award is	9617.50	plus	8.5 %	of income over	104000
105000	106000	the award is	9702.50	plus	8.5 %	of income over	105000
106000	107000	the award is	9787.50	plus	8.5 %	of income over	106000
107000	108000	the award is	9872.50	plus	8 %	of income over	107000
108000	109000	the award is	9952.50	plus	8.5 %	of income over	108000
109000	110000	the award is	10037.50	plus	8.5 %	of income over	109000
110000	111000	the award is	10122.50	plus	8.5 %	of income over	110000
111000	112000	the award is	10207.50	plus	8 %	of income over	111000
112000	113000	the award is	10287.50	plus	8.5 %	of income over	112000
113000	114000	the award is	10372.50	plus	8.5 %	of income over	113000
114000	115000	the award is	10457.50	plus	8.5 %	of income over	114000
115000	116000	the award is	10542.50	plus	8 %	of income over	115000
116000	117000	the award is	10622.50	plus	8.5 %	of income over	116000
117000	118000	the award is	10707.50	plus	8.5 %	of income over	117000
118000	119000	the award is	10792.50	plus	8.5 %	of income over	118000
119000	120000	the award is	10877.50	plus	8 %	of income over	119000
120000	121000	the award is	10957.50	plus	8.5 %	of income over	120000
121000	122000	the award is	11042.50	plus	8.5 %	of income over	121000
122000	123000	the award is	11127.50	plus	8.5 %	of income over	122000
123000	124000	the award is	11212.50	plus	8 %	of income over	123000
124000	125000	the award is	11292.50	plus	8.5 %	of income over	124000
125000	126000	the award is	11377.50	plus	8.5 %	of income over	125000
126000	127000	the award is	11462.50	plus	8.5 %	of income over	126000
127000	128000	the award is	11547.50	plus	8 %	of income over	127000
128000	129000	the award is	11627.50	plus	8.5 %	of income over	128000
129000	130000	the award is	11712.50	plus	8.5 %	of income over	129000
130000	131000	the award is	11797.50	plus	8 %	of income over	130000
131000	132000	the award is	11877.50	plus	8.5 %	of income over	131000
132000	133000	the award is	11962.50	plus	8.5 %	of income over	132000
133000	134000	the award is	12047.50	plus	8.5 %	of income over	133000
134000	135000	the award is	12132.50	plus	8 %	of income over	134000
135000	136000	the award is	12212.50	plus	8.5 %	of income over	135000
136000	137000	the award is	12297.50	plus	8.5 %	of income over	136000
137000	138000	the award is	12382.50	plus	8.5 %	of income over	137000
138000	139000	the award is	12467.50	plus	8 %	of income over	138000
139000	140000	the award is	12547.50	plus	8.5 %	of income over	139000
140000	141000	the award is	12632.50	plus	8.5 %	of income over	140000
141000	142000	the award is	12717.50	plus	8.5 %	of income over	141000
142000	143000	the award is	12802.50	plus	8 %	of income over	142000
143000	144000	the award is	12882.50	plus	8.5 %	of income over	143000
144000	145000	the award is	12967.50	plus	8.5 %	of income over	144000
145000	146000	the award is	13052.50	plus	8.5 %	of income over	145000
146000	147000	the award is	13137.50	plus	8 %	of income over	146000
147000	148000	the award is	13217.50	plus	8.5 %	of income over	147000
148000	149000	the award is	13302.50	plus	8.5 %	of income over	148000
149000	149999	the award is	13387.50	plus	8.5 %	of income over	149000



**Monthly Payment Amounts for Child Support Based on  
Child Support Award Amounts Based on  
Non-custodial Parent's Annual Gross Income Levels**

Province: ONTARIO  
 No. of children: TWO  
 Formula: REVISED FIXED PERCENTAGE-LOW INCOME ADJUSTED  
 Tax Treatment: REVERSED

Annual Gross Income		Annual Award						
from	to							
0	6744	the award is	0.00					
6745	6999	the award is	0.00	plus	58.6 %	of income over	6745	
7000	7999	the award is	150.10	plus	58.4 %	of income over	7000	
8000	8999	the award is	734.10	plus	45.3 %	of income over	8000	
9000	9999	the award is	1187.50	plus	12.0 %	of income over	9000	
10000	10999	the award is	1307.50	plus	12.0 %	of income over	10000	
11000	11999	the award is	1427.50	plus	12.0 %	of income over	11000	
12000	12999	the award is	1547.50	plus	12.0 %	of income over	12000	
13000	13999	the award is	1667.50	plus	12.0 %	of income over	13000	
14000	14999	the award is	1787.50	plus	12.0 %	of income over	14000	
15000	15999	the award is	1907.50	plus	12.0 %	of income over	15000	
16000	16999	the award is	2027.50	plus	12.0 %	of income over	16000	
17000	17999	the award is	2147.50	plus	12.0 %	of income over	17000	
18000	18999	the award is	2267.50	plus	12.0 %	of income over	18000	
19000	19999	the award is	2387.50	plus	12.0 %	of income over	19000	
20000	20999	the award is	2507.50	plus	14.5 %	of income over	20000	
21000	21999	the award is	2652.50	plus	14.0 %	of income over	21000	
22000	22999	the award is	2792.50	plus	19.0 %	of income over	22000	
23000	23999	the award is	2982.50	plus	24.0 %	of income over	23000	
24000	24999	the award is	3222.50	plus	25.0 %	of income over	24000	
25000	25999	the award is	3472.50	plus	24.5 %	of income over	25000	
26000	26999	the award is	3717.50	plus	24.5 %	of income over	26000	
27000	27999	the award is	3962.50	plus	23.5 %	of income over	27000	
28000	28999	the award is	4197.50	plus	19.5 %	of income over	28000	
29000	29999	the award is	4392.50	plus	19.5 %	of income over	29000	
30000	30999	the award is	4587.50	plus	16.0 %	of income over	30000	
31000	31999	the award is	4747.50	plus	18.5 %	of income over	31000	
32000	32999	the award is	4932.50	plus	19.0 %	of income over	32000	
33000	33999	the award is	5122.50	plus	18.5 %	of income over	33000	
34000	34999	the award is	5307.50	plus	19.0 %	of income over	34000	
35000	35999	the award is	5497.50	plus	18.0 %	of income over	35000	
36000	36999	the award is	5677.50	plus	17.0 %	of income over	36000	
37000	37999	the award is	5847.50	plus	17.0 %	of income over	37000	
38000	38999	the award is	6017.50	plus	17.5 %	of income over	38000	
39000	39999	the award is	6192.50	plus	17.0 %	of income over	39000	
40000	40999	the award is	6362.50	plus	17.0 %	of income over	40000	
41000	41999	the award is	6532.50	plus	17.0 %	of income over	41000	
42000	42999	the award is	6702.50	plus	17.0 %	of income over	42000	
43000	43999	the award is	6872.50	plus	17.0 %	of income over	43000	
44000	44999	the award is	7042.50	plus	17.0 %	of income over	44000	
45000	45999	the award is	7212.50	plus	17.0 %	of income over	45000	
46000	46999	the award is	7382.50	plus	17.0 %	of income over	46000	
47000	47999	the award is	7552.50	plus	17.5 %	of income over	47000	
48000	48999	the award is	7727.50	plus	17.0 %	of income over	48000	
49000	49999	the award is	7897.50	plus	15.5 %	of income over	49000	
50000	50999	the award is	8052.50	plus	15.0 %	of income over	50000	



Ontario -Two Children, Revised Fixed Percentage-Low Income Adjusted Formula,  
Reversed Tax Treatment (con't)

Annual Gross Income		Annual Award					
from	to						
51000	51999	<i>the award is</i>	8202.50	<i>plus</i>	15.0 %	<i>of income over</i>	51000
52000	52999	<i>the award is</i>	8352.50	<i>plus</i>	15.5 %	<i>of income over</i>	52000
53000	53999	<i>the award is</i>	8507.50	<i>plus</i>	15.0 %	<i>of income over</i>	53000
54000	54999	<i>the award is</i>	8657.50	<i>plus</i>	15.0 %	<i>of income over</i>	54000
55000	55999	<i>the award is</i>	8807.50	<i>plus</i>	14.5 %	<i>of income over</i>	55000
56000	56999	<i>the award is</i>	8952.50	<i>plus</i>	14.5 %	<i>of income over</i>	56000
57000	57999	<i>the award is</i>	9097.50	<i>plus</i>	15.0 %	<i>of income over</i>	57000
58000	58999	<i>the award is</i>	9247.50	<i>plus</i>	16.0 %	<i>of income over</i>	58000
59000	59999	<i>the award is</i>	9407.50	<i>plus</i>	14.5 %	<i>of income over</i>	59000
60000	60999	<i>the award is</i>	9552.50	<i>plus</i>	13.5 %	<i>of income over</i>	60000
61000	61999	<i>the award is</i>	9687.50	<i>plus</i>	13.5 %	<i>of income over</i>	61000
62000	62999	<i>the award is</i>	9822.50	<i>plus</i>	14.0 %	<i>of income over</i>	62000
63000	63999	<i>the award is</i>	9962.50	<i>plus</i>	13.0 %	<i>of income over</i>	63000
64000	64999	<i>the award is</i>	10092.50	<i>plus</i>	12.5 %	<i>of income over</i>	64000
65000	65999	<i>the award is</i>	10217.50	<i>plus</i>	13.0 %	<i>of income over</i>	65000
66000	66999	<i>the award is</i>	10347.50	<i>plus</i>	13.5 %	<i>of income over</i>	66000
67000	67999	<i>the award is</i>	10482.50	<i>plus</i>	13.0 %	<i>of income over</i>	67000
68000	68999	<i>the award is</i>	10612.50	<i>plus</i>	13.5 %	<i>of income over</i>	68000
69000	69999	<i>the award is</i>	10747.50	<i>plus</i>	13.0 %	<i>of income over</i>	69000
70000	70999	<i>the award is</i>	10877.50	<i>plus</i>	13.5 %	<i>of income over</i>	70000
71000	71999	<i>the award is</i>	11012.50	<i>plus</i>	13.5 %	<i>of income over</i>	71000
72000	72999	<i>the award is</i>	11147.50	<i>plus</i>	13.0 %	<i>of income over</i>	72000
73000	73999	<i>the award is</i>	11277.50	<i>plus</i>	13.5 %	<i>of income over</i>	73000
74000	74999	<i>the award is</i>	11412.50	<i>plus</i>	13.5 %	<i>of income over</i>	74000
75000	75999	<i>the award is</i>	11547.50	<i>plus</i>	13.0 %	<i>of income over</i>	75000
76000	76999	<i>the award is</i>	11677.50	<i>plus</i>	13.5 %	<i>of income over</i>	76000
77000	77999	<i>the award is</i>	11812.50	<i>plus</i>	13.0 %	<i>of income over</i>	77000
78000	78999	<i>the award is</i>	11942.50	<i>plus</i>	13.5 %	<i>of income over</i>	78000
79000	79999	<i>the award is</i>	12077.50	<i>plus</i>	13.5 %	<i>of income over</i>	79000
80000	80999	<i>the award is</i>	12212.50	<i>plus</i>	13.0 %	<i>of income over</i>	80000
81000	81999	<i>the award is</i>	12342.50	<i>plus</i>	13.5 %	<i>of income over</i>	81000
82000	82999	<i>the award is</i>	12477.50	<i>plus</i>	13.5 %	<i>of income over</i>	82000
83000	83999	<i>the award is</i>	12612.50	<i>plus</i>	12.5 %	<i>of income over</i>	83000
84000	84999	<i>the award is</i>	12737.50	<i>plus</i>	13.0 %	<i>of income over</i>	84000
85000	85999	<i>the award is</i>	12867.50	<i>plus</i>	12.5 %	<i>of income over</i>	85000
86000	86999	<i>the award is</i>	12992.50	<i>plus</i>	13.0 %	<i>of income over</i>	86000
87000	87999	<i>the award is</i>	13122.50	<i>plus</i>	13.0 %	<i>of income over</i>	87000
88000	88999	<i>the award is</i>	13252.50	<i>plus</i>	13.0 %	<i>of income over</i>	88000
89000	89999	<i>the award is</i>	13382.50	<i>plus</i>	13.0 %	<i>of income over</i>	89000
90000	90999	<i>the award is</i>	13512.50	<i>plus</i>	13.0 %	<i>of income over</i>	90000
91000	91999	<i>the award is</i>	13642.50	<i>plus</i>	13.0 %	<i>of income over</i>	91000
92000	92999	<i>the award is</i>	13772.50	<i>plus</i>	13.0 %	<i>of income over</i>	92000
93000	93999	<i>the award is</i>	13902.50	<i>plus</i>	13.0 %	<i>of income over</i>	93000
94000	94999	<i>the award is</i>	14032.50	<i>plus</i>	13.0 %	<i>of income over</i>	94000
95000	95999	<i>the award is</i>	14162.50	<i>plus</i>	13.0 %	<i>of income over</i>	95000
96000	96999	<i>the award is</i>	14292.50	<i>plus</i>	13.0 %	<i>of income over</i>	96000
97000	97999	<i>the award is</i>	14422.50	<i>plus</i>	13.0 %	<i>of income over</i>	97000
98000	98999	<i>the award is</i>	14552.50	<i>plus</i>	13.0 %	<i>of income over</i>	98000
99000	99999	<i>the award is</i>	14682.50	<i>plus</i>	13.0 %	<i>of income over</i>	99000

**Ontario -Two Children, Revised Fixed Percentage-Low Income Adjusted Formula,  
Reversed Tax Treatment (con't)**

<b>Annual Gross Income</b>		<b>Annual Award</b>					
<b>from</b>	<b>to</b>						
100000	101000	<i>the award is</i>	14812.50	<i>plus</i>	13 %	<i>of income over</i>	100000
101000	102000	<i>the award is</i>	14942.50	<i>plus</i>	14 %	<i>of income over</i>	101000
102000	103000	<i>the award is</i>	15077.50	<i>plus</i>	13 %	<i>of income over</i>	102000
103000	104000	<i>the award is</i>	15207.50	<i>plus</i>	13 %	<i>of income over</i>	103000
104000	105000	<i>the award is</i>	15337.50	<i>plus</i>	13 %	<i>of income over</i>	104000
105000	106000	<i>the award is</i>	15467.50	<i>plus</i>	13 %	<i>of income over</i>	105000
106000	107000	<i>the award is</i>	15597.50	<i>plus</i>	13 %	<i>of income over</i>	106000
107000	108000	<i>the award is</i>	15727.50	<i>plus</i>	13 %	<i>of income over</i>	107000
108000	109000	<i>the award is</i>	15857.50	<i>plus</i>	13 %	<i>of income over</i>	108000
109000	110000	<i>the award is</i>	15987.50	<i>plus</i>	13 %	<i>of income over</i>	109000
110000	111000	<i>the award is</i>	16117.50	<i>plus</i>	13 %	<i>of income over</i>	110000
111000	112000	<i>the award is</i>	16247.50	<i>plus</i>	13 %	<i>of income over</i>	111000
112000	113000	<i>the award is</i>	16377.50	<i>plus</i>	13 %	<i>of income over</i>	112000
113000	114000	<i>the award is</i>	16507.50	<i>plus</i>	13 %	<i>of income over</i>	113000
114000	115000	<i>the award is</i>	16637.50	<i>plus</i>	13 %	<i>of income over</i>	114000
115000	116000	<i>the award is</i>	16767.50	<i>plus</i>	13 %	<i>of income over</i>	115000
116000	117000	<i>the award is</i>	16897.50	<i>plus</i>	13 %	<i>of income over</i>	116000
117000	118000	<i>the award is</i>	17027.50	<i>plus</i>	13 %	<i>of income over</i>	117000
118000	119000	<i>the award is</i>	17157.50	<i>plus</i>	13 %	<i>of income over</i>	118000
119000	120000	<i>the award is</i>	17287.50	<i>plus</i>	13 %	<i>of income over</i>	119000
120000	121000	<i>the award is</i>	17417.50	<i>plus</i>	13 %	<i>of income over</i>	120000
121000	122000	<i>the award is</i>	17547.50	<i>plus</i>	13 %	<i>of income over</i>	121000
122000	123000	<i>the award is</i>	17677.50	<i>plus</i>	13 %	<i>of income over</i>	122000
123000	124000	<i>the award is</i>	17807.50	<i>plus</i>	13 %	<i>of income over</i>	123000
124000	125000	<i>the award is</i>	17937.50	<i>plus</i>	14 %	<i>of income over</i>	124000
125000	126000	<i>the award is</i>	18072.50	<i>plus</i>	13 %	<i>of income over</i>	125000
126000	127000	<i>the award is</i>	18202.50	<i>plus</i>	13 %	<i>of income over</i>	126000
127000	128000	<i>the award is</i>	18332.50	<i>plus</i>	13 %	<i>of income over</i>	127000
128000	129000	<i>the award is</i>	18462.50	<i>plus</i>	13 %	<i>of income over</i>	128000
129000	130000	<i>the award is</i>	18592.50	<i>plus</i>	13 %	<i>of income over</i>	129000
130000	131000	<i>the award is</i>	18722.50	<i>plus</i>	13 %	<i>of income over</i>	130000
131000	132000	<i>the award is</i>	18852.50	<i>plus</i>	13 %	<i>of income over</i>	131000
132000	133000	<i>the award is</i>	18982.50	<i>plus</i>	13 %	<i>of income over</i>	132000
133000	134000	<i>the award is</i>	19112.50	<i>plus</i>	13 %	<i>of income over</i>	133000
134000	135000	<i>the award is</i>	19242.50	<i>plus</i>	13 %	<i>of income over</i>	134000
135000	136000	<i>the award is</i>	19372.50	<i>plus</i>	13 %	<i>of income over</i>	135000
136000	137000	<i>the award is</i>	19502.50	<i>plus</i>	13 %	<i>of income over</i>	136000
137000	138000	<i>the award is</i>	19632.50	<i>plus</i>	13 %	<i>of income over</i>	137000
138000	139000	<i>the award is</i>	19762.50	<i>plus</i>	13 %	<i>of income over</i>	138000
139000	140000	<i>the award is</i>	19892.50	<i>plus</i>	13 %	<i>of income over</i>	139000
140000	141000	<i>the award is</i>	20022.50	<i>plus</i>	13 %	<i>of income over</i>	140000
141000	142000	<i>the award is</i>	20152.50	<i>plus</i>	13 %	<i>of income over</i>	141000
142000	143000	<i>the award is</i>	20282.50	<i>plus</i>	13 %	<i>of income over</i>	142000
143000	144000	<i>the award is</i>	20412.50	<i>plus</i>	13 %	<i>of income over</i>	143000
144000	145000	<i>the award is</i>	20542.50	<i>plus</i>	13 %	<i>of income over</i>	144000
145000	146000	<i>the award is</i>	20672.50	<i>plus</i>	13 %	<i>of income over</i>	145000
146000	147000	<i>the award is</i>	20802.50	<i>plus</i>	13 %	<i>of income over</i>	146000
147000	148000	<i>the award is</i>	20932.50	<i>plus</i>	14 %	<i>of income over</i>	147000
148000	149000	<i>the award is</i>	21067.50	<i>plus</i>	13 %	<i>of income over</i>	148000
149000	149999	<i>the award is</i>	21197.50	<i>plus</i>	13 %	<i>of income over</i>	149000



**Child Support Award Amounts Based on  
Non-custodial Parent's Annual Gross Income Levels**

Province: ONTARIO  
 No. of children: THREE  
 Formula: REVISED FIXED PERCENTAGE-LOW INCOME ADJUSTED  
 Tax Treatment: REVERSED

Annual Gross Income		Annual Award					
from	to						
0	6744	the award is	0.00				
6745	6999	the award is	0.00	plus	73.7 %	of income over	6745
7000	7999	the award is	188.68	plus	73.4 %	of income over	7000
8000	8999	the award is	922.62	plus	62.5 %	of income over	8000
9000	9999	the award is	1547.50	plus	6.0 %	of income over	9000
10000	10999	the award is	1607.50	plus	15.0 %	of income over	10000
11000	11999	the award is	1757.50	plus	14.5 %	of income over	11000
12000	12999	the award is	1902.50	plus	19.5 %	of income over	12000
13000	13999	the award is	2097.50	plus	20.0 %	of income over	13000
14000	14999	the award is	2297.50	plus	19.5 %	of income over	14000
15000	15999	the award is	2492.50	plus	19.5 %	of income over	15000
16000	16999	the award is	2687.50	plus	19.5 %	of income over	16000
17000	17999	the award is	2882.50	plus	20.0 %	of income over	17000
18000	18999	the award is	3082.50	plus	19.5 %	of income over	18000
19000	19999	the award is	3277.50	plus	19.5 %	of income over	19000
20000	20999	the award is	3472.50	plus	19.5 %	of income over	20000
21000	21999	the award is	3667.50	plus	20.0 %	of income over	21000
22000	22999	the award is	3867.50	plus	19.5 %	of income over	22000
23000	23999	the award is	4062.50	plus	20.5 %	of income over	23000
24000	24999	the award is	4267.50	plus	21.0 %	of income over	24000
25000	25999	the award is	4477.50	plus	19.5 %	of income over	25000
26000	26999	the award is	4672.50	plus	21.5 %	of income over	26000
27000	27999	the award is	4887.50	plus	28.0 %	of income over	27000
28000	28999	the award is	5167.50	plus	34.0 %	of income over	28000
29000	29999	the award is	5507.50	plus	32.5 %	of income over	29000
30000	30999	the award is	5832.50	plus	28.5 %	of income over	30000
31000	31999	the award is	6117.50	plus	31.5 %	of income over	31000
32000	32999	the award is	6432.50	plus	23.5 %	of income over	32000
33000	33999	the award is	6667.50	plus	22.5 %	of income over	33000
34000	34999	the award is	6892.50	plus	22.5 %	of income over	34000
35000	35999	the award is	7117.50	plus	22.5 %	of income over	35000
36000	36999	the award is	7342.50	plus	23.0 %	of income over	36000
37000	37999	the award is	7572.50	plus	21.5 %	of income over	37000
38000	38999	the award is	7787.50	plus	22.0 %	of income over	38000
39000	39999	the award is	8007.50	plus	21.5 %	of income over	39000
40000	40999	the award is	8222.50	plus	21.5 %	of income over	40000
41000	41999	the award is	8437.50	plus	21.0 %	of income over	41000
42000	42999	the award is	8647.50	plus	21.5 %	of income over	42000
43000	43999	the award is	8862.50	plus	21.0 %	of income over	43000
44000	44999	the award is	9072.50	plus	21.5 %	of income over	44000
45000	45999	the award is	9287.50	plus	21.0 %	of income over	45000
46000	46999	the award is	9497.50	plus	21.0 %	of income over	46000
47000	47999	the award is	9707.50	plus	21.5 %	of income over	47000
48000	48999	the award is	9922.50	plus	21.0 %	of income over	48000
49000	49999	the award is	10132.50	plus	21.5 %	of income over	49000
50000	50999	the award is	10347.50	plus	21.0 %	of income over	50000



Ontario -Three Children, Revised Fixed Percentage-Low Income Adjusted Formula,  
Reversed Tax Treatment (con't)

Annual Gross Income		Annual Award					
from	to						
51000	51999	the award is	10557.50	plus	21.5 %	of income over	51000
52000	52999	the award is	10772.50	plus	21.0 %	of income over	52000
53000	53999	the award is	10982.50	plus	21.5 %	of income over	53000
54000	54999	the award is	11197.50	plus	20.5 %	of income over	54000
55000	55999	the award is	11402.50	plus	20.5 %	of income over	55000
56000	56999	the award is	11607.50	plus	20.5 %	of income over	56000
57000	57999	the award is	11812.50	plus	21.0 %	of income over	57000
58000	58999	the award is	12022.50	plus	22.5 %	of income over	58000
59000	59999	the award is	12247.50	plus	20.0 %	of income over	59000
60000	60999	the award is	12447.50	plus	19.0 %	of income over	60000
61000	61999	the award is	12637.50	plus	17.5 %	of income over	61000
62000	62999	the award is	12812.50	plus	17.5 %	of income over	62000
63000	63999	the award is	12987.50	plus	17.0 %	of income over	63000
64000	64999	the award is	13157.50	plus	16.5 %	of income over	64000
65000	65999	the award is	13322.50	plus	17.0 %	of income over	65000
66000	66999	the award is	13492.50	plus	17.0 %	of income over	66000
67000	67999	the award is	13662.50	plus	17.0 %	of income over	67000
68000	68999	the award is	13832.50	plus	17.0 %	of income over	68000
69000	69999	the award is	14002.50	plus	17.0 %	of income over	69000
70000	70999	the award is	14172.50	plus	17.5 %	of income over	70000
71000	71999	the award is	14347.50	plus	17.0 %	of income over	71000
72000	72999	the award is	14517.50	plus	17.0 %	of income over	72000
73000	73999	the award is	14687.50	plus	17.0 %	of income over	73000
74000	74999	the award is	14857.50	plus	17.5 %	of income over	74000
75000	75999	the award is	15032.50	plus	17.0 %	of income over	75000
76000	76999	the award is	15202.50	plus	17.0 %	of income over	76000
77000	77999	the award is	15372.50	plus	17.0 %	of income over	77000
78000	78999	the award is	15542.50	plus	17.0 %	of income over	78000
79000	79999	the award is	15712.50	plus	17.5 %	of income over	79000
80000	80999	the award is	15887.50	plus	17.0 %	of income over	80000
81000	81999	the award is	16057.50	plus	17.0 %	of income over	81000
82000	82999	the award is	16227.50	plus	17.0 %	of income over	82000
83000	83999	the award is	16397.50	plus	17.0 %	of income over	83000
84000	84999	the award is	16567.50	plus	16.0 %	of income over	84000
85000	85999	the award is	16727.50	plus	16.5 %	of income over	85000
86000	86999	the award is	16892.50	plus	17.0 %	of income over	86000
87000	87999	the award is	17062.50	plus	16.5 %	of income over	87000
88000	88999	the award is	17227.50	plus	17.0 %	of income over	88000
89000	89999	the award is	17397.50	plus	16.5 %	of income over	89000
90000	90999	the award is	17562.50	plus	17.0 %	of income over	90000
91000	91999	the award is	17732.50	plus	16.5 %	of income over	91000
92000	92999	the award is	17897.50	plus	17.0 %	of income over	92000
93000	93999	the award is	18067.50	plus	16.5 %	of income over	93000
94000	94999	the award is	18232.50	plus	17.0 %	of income over	94000
95000	95999	the award is	18402.50	plus	16.5 %	of income over	95000
96000	96999	the award is	18567.50	plus	17.0 %	of income over	96000
97000	97999	the award is	18737.50	plus	16.5 %	of income over	97000
98000	98999	the award is	18902.50	plus	17.0 %	of income over	98000
99000	99999	the award is	19072.50	plus	16.5 %	of income over	99000

**Ontario -Three Children, Revised Fixed Percentage-Low Income Adjusted Formula,  
Reversed Tax Treatment (con't)**

<b>Annual Gross Income</b>		<b>Annual Award</b>					
<b>from</b>	<b>to</b>						
100000	101000	<i>the award is</i>	19237.50	<i>plus</i>	17 %	<i>of income over</i>	100000
101000	102000	<i>the award is</i>	19407.50	<i>plus</i>	17 %	<i>of income over</i>	101000
102000	103000	<i>the award is</i>	19572.50	<i>plus</i>	17 %	<i>of income over</i>	102000
103000	104000	<i>the award is</i>	19742.50	<i>plus</i>	17 %	<i>of income over</i>	103000
104000	105000	<i>the award is</i>	19907.50	<i>plus</i>	17 %	<i>of income over</i>	104000
105000	106000	<i>the award is</i>	20077.50	<i>plus</i>	17 %	<i>of income over</i>	105000
106000	107000	<i>the award is</i>	20242.50	<i>plus</i>	17 %	<i>of income over</i>	106000
107000	108000	<i>the award is</i>	20412.50	<i>plus</i>	17 %	<i>of income over</i>	107000
108000	109000	<i>the award is</i>	20577.50	<i>plus</i>	17 %	<i>of income over</i>	108000
109000	110000	<i>the award is</i>	20747.50	<i>plus</i>	17 %	<i>of income over</i>	109000
110000	111000	<i>the award is</i>	20912.50	<i>plus</i>	17 %	<i>of income over</i>	110000
111000	112000	<i>the award is</i>	21077.50	<i>plus</i>	17 %	<i>of income over</i>	111000
112000	113000	<i>the award is</i>	21247.50	<i>plus</i>	17 %	<i>of income over</i>	112000
113000	114000	<i>the award is</i>	21412.50	<i>plus</i>	17 %	<i>of income over</i>	113000
114000	115000	<i>the award is</i>	21582.50	<i>plus</i>	17 %	<i>of income over</i>	114000
115000	116000	<i>the award is</i>	21747.50	<i>plus</i>	17 %	<i>of income over</i>	115000
116000	117000	<i>the award is</i>	21917.50	<i>plus</i>	17 %	<i>of income over</i>	116000
117000	118000	<i>the award is</i>	22082.50	<i>plus</i>	17 %	<i>of income over</i>	117000
118000	119000	<i>the award is</i>	22252.50	<i>plus</i>	17 %	<i>of income over</i>	118000
119000	120000	<i>the award is</i>	22417.50	<i>plus</i>	17 %	<i>of income over</i>	119000
120000	121000	<i>the award is</i>	22587.50	<i>plus</i>	17 %	<i>of income over</i>	120000
121000	122000	<i>the award is</i>	22752.50	<i>plus</i>	17 %	<i>of income over</i>	121000
122000	123000	<i>the award is</i>	22922.50	<i>plus</i>	17 %	<i>of income over</i>	122000
123000	124000	<i>the award is</i>	23087.50	<i>plus</i>	17 %	<i>of income over</i>	123000
124000	125000	<i>the award is</i>	23257.50	<i>plus</i>	17 %	<i>of income over</i>	124000
125000	126000	<i>the award is</i>	23422.50	<i>plus</i>	17 %	<i>of income over</i>	125000
126000	127000	<i>the award is</i>	23592.50	<i>plus</i>	17 %	<i>of income over</i>	126000
127000	128000	<i>the award is</i>	23757.50	<i>plus</i>	17 %	<i>of income over</i>	127000
128000	129000	<i>the award is</i>	23927.50	<i>plus</i>	17 %	<i>of income over</i>	128000
129000	130000	<i>the award is</i>	24092.50	<i>plus</i>	17 %	<i>of income over</i>	129000
130000	131000	<i>the award is</i>	24262.50	<i>plus</i>	17 %	<i>of income over</i>	130000
131000	132000	<i>the award is</i>	24427.50	<i>plus</i>	17 %	<i>of income over</i>	131000
132000	133000	<i>the award is</i>	24597.50	<i>plus</i>	17 %	<i>of income over</i>	132000
133000	134000	<i>the award is</i>	24762.50	<i>plus</i>	17 %	<i>of income over</i>	133000
134000	135000	<i>the award is</i>	24932.50	<i>plus</i>	17 %	<i>of income over</i>	134000
135000	136000	<i>the award is</i>	25097.50	<i>plus</i>	17 %	<i>of income over</i>	135000
136000	137000	<i>the award is</i>	25267.50	<i>plus</i>	17 %	<i>of income over</i>	136000
137000	138000	<i>the award is</i>	25432.50	<i>plus</i>	17 %	<i>of income over</i>	137000
138000	139000	<i>the award is</i>	25602.50	<i>plus</i>	17 %	<i>of income over</i>	138000
139000	140000	<i>the award is</i>	25767.50	<i>plus</i>	17 %	<i>of income over</i>	139000
140000	141000	<i>the award is</i>	25937.50	<i>plus</i>	17 %	<i>of income over</i>	140000
141000	142000	<i>the award is</i>	26102.50	<i>plus</i>	17 %	<i>of income over</i>	141000
142000	143000	<i>the award is</i>	26272.50	<i>plus</i>	17 %	<i>of income over</i>	142000
143000	144000	<i>the award is</i>	26437.50	<i>plus</i>	17 %	<i>of income over</i>	143000
144000	145000	<i>the award is</i>	26602.50	<i>plus</i>	17 %	<i>of income over</i>	144000
145000	146000	<i>the award is</i>	26772.50	<i>plus</i>	17 %	<i>of income over</i>	145000
146000	147000	<i>the award is</i>	26937.50	<i>plus</i>	17 %	<i>of income over</i>	146000
147000	148000	<i>the award is</i>	27107.50	<i>plus</i>	17 %	<i>of income over</i>	147000
148000	149000	<i>the award is</i>	27272.50	<i>plus</i>	17 %	<i>of income over</i>	148000
149000	149999	<i>the award is</i>	27442.50	<i>plus</i>	17 %	<i>of income over</i>	149000





## **APPENDIX "D"**

### **FUTURE DIRECTIONS FOR DEVELOPMENT OF A NATIONAL SUPPORT ENFORCEMENT STRATEGY**



# **FUTURE DIRECTIONS FOR DEVELOPMENT OF A NATIONAL SUPPORT ENFORCEMENT STRATEGY**

## **Introduction**

The intended purpose of this document is to establish a framework of principles and serve as a working document for the Family Law Committee in its review of support enforcement in Canada. Its development comes in response to the recent consultation on child support which produced widespread comments on support enforcement and in particular on the need to strengthen enforcement programs nationwide. The Family Law Committee and the jurisdictions will be working in the coming year on the development of a National Support Enforcement Strategy to be presented to Deputy Ministers by the end of 1995.

The present document contains a) an historical background of maintenance enforcement programs in Canada; b) a presentation of various improvements that were recently adopted by the provinces, territories and the federal government; c) proposed objectives for initiatives that could lead to improving support enforcement across the country.

## **A. HISTORICAL BACKGROUND**

High rates of default on child and spousal support have existed since the first orders were made under deserted wives and children legislation well over a century ago. As the rate of family breakdown climbed dramatically in the 1970s and 80s, the problem of defaults grew proportionately. Widespread flouting of these orders contributed to the poverty of custodial parents and children and brought disrepute to the justice system.

Originally a matter of private law, the issue required government involvement for two main reasons. First, custodial parents lacked money and time to pay lawyers to enforce these orders, especially when rates of success were poor and the orders represented meagre amounts. The system of private law simply was not serving them. Second, custodial parents, lacking reasonable support from their former partners, were forced to turn to governments for social assistance. Governments felt the problem directly in their budgets.

Manitoba was the first government in Canada to react in a significant way. In 1980, it established an automated provincially administered enforcement program. The program was monitored carefully and early reports showed a dramatic increase in rates of compliance.

In 1981, the provinces, territories and the federal government created a Committee on Enforcement of Maintenance and Custody Orders which addressed ways to reduce the high rates of default. In 1983, the Committee tabled its report with Deputy Ministers and recommended a more active federal role in the area of enforcement. The Committee also



concluded that each provincial and territorial government should establish an enforcement program similar to that of Manitoba, and that they should also develop uniform enforcement legislation.

The majority of the Committee's recommendations were adopted. Convinced of the need for government intervention, every province and territory followed the Committee's recommendations and implemented enforcement programs. The federal government initially set up a \$1.1 million fund to encourage provinces and territories to establish support enforcement programs.

In 1986, the federal government enacted the Family Orders and Agreements Enforcement Assistance Act (FOAEA). Part I of the Act allows for the release of information from federal information banks to help trace defaulting spouses where there has been a breach of a family order. Part II of the Act allows for the garnishment of designated federal funds payable to a defaulting spouse. A unit was established within the Department of Justice to provide this locating information and operate the garnishment of federal funds owed to support debtors in default of a support order or agreement. This program has grown considerably since its inception. It now processes 10,000 locating requests a year and garnishes approximately \$37 million annually, from sources such as income tax returns and unemployment insurance payments.

A second federal fund of \$5.1 million was set up in 1992-93 for a period of five years, in order to help provinces and territories improve their respective programs. The size and costs of provincial and territorial programs have grown well beyond any of the original predictions.

It should be noted that other countries have also set up support enforcement programs. For example, every American state now has a state run enforcement program. Australia has a program which combines support determination with support enforcement. Their program is administered through their tax department and it incorporates automatic wage deduction.

While more custodial parents now receive support, relatively high rates of default continue to plague the programs that were considered the solution. Why do the government-run support enforcement programs continue to experience significant rates of default?

Some studies have indicated that the support debtor's ability to pay is not the most important cause of default. It does, however, remain one of the major reasons of default and it rises in prominence in times of recession. Just as custodial parents seldom have the means to access the judicial system, non-custodial parents, suffering drops in income, experience similar problems. To vary an order, they have to incur legal costs to have the order reduced to reflect their decreased capacity to pay. Because of the costs, non-custodial parents usually prefer to fall in arrears, wait until their financial situation improves and then apply for a retroactive variation.

The attitude of many non-custodial payers is also important. They can always think of reasons as to why they should not pay, e.g. it's not going to the kids anyway, their friends pay less than they do, they have a new family to support. In these cases, the priority attached to paying child support can be fairly low.

If a person is continuously employed by a company or government, collection by means of continuing garnishment orders or automatic payroll deduction is relatively easy. However, because of the degree of flux in the Canadian labour force, these measures are sometimes not effective. Locating debtor spouses continues to be a major problem for all enforcement jurisdictions.

Self-employed debtors also present a challenge to all provincial and territorial enforcement programs. Many of them are able to maintain assets in the name of their company and/or others, to elude making payments.

Finally, inter-provincial and international co-operation in this area, while talked about as a necessary goal and often existing on paper, suffers from practical problems. Different court officials have difficulty processing each other's forms or require different information in order to enforce within their jurisdiction. Also, within the overburdened systems, these out-of-province orders do not always receive the same priority as domestic orders.

There will always be a certain intractability to the problem of default. Any one approach will only have the potential to address a certain aspect of the problem. Yet as provincial and federal enforcement systems gather experience, they are proposing interesting and creative ways to improve compliance rates and recognizing the need to work in a more coordinated manner.

## **B. RECENT IMPROVEMENTS TO PROVINCIAL AND TERRITORIAL MAINTENANCE ENFORCEMENT PROGRAMS (MEP) AND FEDERAL ENFORCEMENT SERVICE**

In the last few years, jurisdictions have been working on different measures to improve their programs.

### **Nova Scotia:**

- is in the process of adopting a new *Maintenance Enforcement Act*. The legislation has a more administrative approach and gives the Director of the Maintenance Enforcement Program larger powers without having to go to court.

## **New Brunswick:**

- converted its Maintenance Enforcement Program from an opt-in system to an opt-out system in April 1992. Every support order must now be filed with the Court and payments must be made to the Court, unless the beneficiary chooses to opt-out.
- provided that once the program receives the support order the payer must elect within two weeks one of three methods of payment into Court: a) can voluntarily make arrangements with an income source for deduction and payment to the Court of sums required; b) may provide the MEP administrator with a written request to issue and serve a payment order on his/her income source; c) may file with the Court and maintain a bond or other security equal to three times the amount of maintenance owed on a monthly basis. If the payer fails to make an election within two weeks, a payment order is automatically issued and served.
- empowered family court administrators, upon default, to provide appropriate and effective non-judicial remedies automatically, without notice and without a hearing. For example, administrators may now:
  - o issue and serve a payment order which will bind all money due and accruing to the payer(excluding income assistance benefits);
  - o require the payer to file a financial statement within 15 days;
  - o summon the payer to show cause before a judge, register with the Registrar of Deeds a certificate which constitutes a lien against all real and personal property of the payer;
- effective May 1993, required Domestic Legal Aid clients to be first seen by a court social worker who is a trained counsellor and mediator with special knowledge of separation, divorce, and family violence.
- is presently reviewing legislation respecting the maintenance enforcement program.

## **Ontario:**

- introduced automatic wage deduction of support payments (Family Support Plan Act, March 1992).
- produced "plain language" brochures for payers and recipients in five languages in addition to French and English.



- produced specially targeted brochures to lawyers and income sources.
- introduced simplified filing forms for recipients to complete upon registration with the Plan.
- improved the Central Inquiry Telephone service for clients by providing personal and automated information responses to over 220,000 calls per month.
- reviewed and revised all computer generated letters to ensure plain language and clarity.
- introduced an arrears repayment scheme for payers.
- introduced direct deposit of support payments into recipients' bank accounts. Plans underway for telebanking for payers and electronic transmission of support payments from income sources to FSP.
- conducted two major media advertising campaigns focusing on the issue of support default and its impact on children and society.
- emphasized outreach to family law bar, bench, advocacy groups and other major stakeholders.
- produced extensive enforcement and financial manuals to ensure standardization of operational practices throughout the province. All staff were trained using these manuals.

#### **Saskatchewan:**

- is looking at new legislative amendments including motor vehicle licence withholding.
- implemented a direct computer link to Alberta and British Columbia and working towards a national hookup.

#### **Manitoba:**

- completed a detailed maintenance enforcement review and community consultations in the fall of 1994.
- have planned information sessions on maintenance enforcement orders for payers and family law lawyers.

- developed automated voice answering system for information on files for both creditor and debtors which is intended for implementation in early 1995.
- made a number of technical improvements to the automated systems.
- is considering a variety of amendments to the enforcement legislation.

**Alberta:**

- passed recent amendments to legislation which provide for:
  - ° the restriction of motor vehicle related services in case of default;
  - ° garnishment of joint bank accounts;
  - ° access to Social Insurance Number (SIN) and employment information from provincial databases;
  - ° removal of the limitation which allowed enforcement of only up to 10 years of arrears.

**British Columbia:**

- has an ongoing policy of review and enhancement of its Family Maintenance Enforcement Program and supporting legislation.
- most recently introduced the *Family Maintenance Enforcement Amendment Act, 1994* which includes:
  - ° extensive provisions to enhance the timely and effective enforcement of maintenance orders;
  - ° enhanced powers for the Director of Maintenance Enforcement;
  - ° provisions for Bench maintenance orders to facilitate early enforcement;
  - ° provision concerning the disclosure of information and how payments may be made, including powers to enable the court to require corporate and other business partners of the debtor to give evidence and provide documentation;
  - ° provisions for interest on arrears of maintenance;

- provisions regarding attachments, reporting and penalties, including attachments from outside the Province;
- provisions for registration of maintenance orders against personal property.

#### **Northwest Territories:**

- is reviewing its maintenance enforcement legislation and looking specifically at disclosure of the Social Insurance Number of the debtor.
- is developing an awareness campaign on support award targeting the general public and schools. They are also preparing information pamphlets for both debtors and creditors.

#### **Yukon Territory:**

- prepared a communication strategy, a public awareness campaign and a package to inform the population on Maintenance Enforcement Program and the importance of paying maintenance orders.
- is reviewing legislation on its maintenance enforcement program.
- is starting a pilot project with Mediation Yukon to work out arrears schedules with payers and develop ways to make regular payments.

#### **Federal Enforcement Services:**

- extended the time period for garnishment summons from one year to five years. This reduces the administrative burden on the provinces, territories and federal services.
- established a Working Capital Fund to reduce the previously significant delays (from 8 weeks to 3 or 4 weeks) between the identification of federal monies and diversion these monies to the provinces and territories.
- provided for garnishments of funds paid out under The Atlantic Groundfish Strategy for enforcement of support orders.
- set up electronic data interchange with Revenue Canada Taxation to assist in the garnishment process. Planning similar set ups with the Human Resources



Development Department for garnishment of Unemployment Insurance (UIC) monies. This will reduce delays for payment.

- planned a direct computer link between provincial/territorial enforcement programs and the FOAEA Unit to help process garnishments; it should be implemented in 1995.
- assisted in linking all jurisdictions, by computer, to motor vehicle license bureaus in order to trace payers and their vehicles anywhere in Canada.

### **C. PROPOSED OBJECTIVES FOR INITIATIVES TO IMPROVE SUPPORT ENFORCEMENT IN CANADA**

In the course of the next year, the Federal/Provincial/Territorial Family Law Committee will be developing a National Support Enforcement Strategy in consultation with the directors of Maintenance Enforcement Programs in every jurisdiction. The strategy will be guided by the following objectives:

- 1. Continuing recognition of the provinces and territories as the primary collectors of family support payments and of the federal government as a provider of complementary services to the provincial and territorial enforcement programs.**

For over a decade, the federal government has recognized provincial and territorial jurisdiction in this area and has encouraged provinces and territories to implement enforcement programs. This strategy continues to recognize the provinces and territories as the primary collectors of child and spousal support in Canada.

The federal government will mainly assume its complementary role by continuing to assist the provinces and territories through the FOAEA Act. Also, the federal government will continue to assist the provinces and territories through the Garnishment, Attachment and Pension Diversion Act (GAPDA) which allows for the garnishment of federal employees' wages and pensions. Finally, the \$5.1 million Federal Enforcement Fund will continue to be distributed to the provinces and territories in order to help them improve their respective enforcement programs.

- 2. A commitment to study the causes of default and to identify and study other possible improvements for payment of support in Canada.**

The federal government intends to conduct a study of the various causes for default and to examine possible alternative solutions to existing problems in the area of support enforcement. Different countries such as Australia, the United Kingdom and Sweden have adopted different systems in order to deal with the problems of default.

This research project would involve working closely with different jurisdictions as well as with other federal and provincial departments. In this regard, a feasibility study for collecting support through the tax system and consideration of some form of advanced maintenance system could be conducted with the cooperation of the departments of Revenue Canada, Finance and Human Resources Development.

### **3. Establishment of National Enforcement Statistical Survey/Family Law Data Development**

Presently there exist a number of data sources, i.e., the Central Divorce Registry and the Maintenance Enforcement Programs, which collect information relevant to family law. Improvements would be required to these data banks. New data systems at the court level might also be developed. This data could then be exploited for research and policy development in family law and in particular with regards to enforcement of support orders. The database would provide current information on child/spousal support levels, variations of orders, default rates, dollar amounts in default, characteristics of persons in default, nature and variation of custody and access orders and effectiveness of enforcement mechanisms. This information would also assist in monitoring and evaluating the success of the new measures to improve enforcement and the implementation of a child support formula.

### **4. A commitment to better coordination between the federal, provincial and territorial enforcement services.**

Better compliance rates could be achieved by improving coordination between the federal, provincial and territorial enforcement services. Already, improvements have begun due to innovations in different jurisdictions and assistance from the Federal Enforcement Fund.

Better coordination must be achieved between the federal government and provincial/territorial enforcement services and between the provinces and territories services members. One of the ways to improve coordination would be to create a coordinator position at the national level. The national coordinator would be responsible for coordinating enforcement initiatives that have a national perspective.

Another way of improving coordination between jurisdictions is the work presently being conducted by the federal/provincial/territorial sub-committee on Reciprocal Enforcement of Maintenance Orders, which is looking at ways to improve the enforcement of out-of-province orders. The sub-committee is considering both the administrative procedures and amendments to legislation. Ideally, uniform standards would be developed for the handling of these types of orders. The work of this sub-committee could be speeded up and made more comprehensive if it received funding.

The federal government could work more closely with the provinces to study how improvements could be brought to the enforcement of support orders with other countries including the United States. Provinces already have reciprocal enforcement with many American states and various countries. With some jurisdictions, more detailed protocols are required which would, for example, state that the reciprocating jurisdiction will maintain a central registry of orders, assign a specific staff person to the file, and agree to enforce within a specified time period. The federal government could work on behalf of the provinces and territories to examine with the United States or any other foreign state, how uniform reciprocal enforcement could be achieved between our countries. Finally, the federal government could examine the possibility of adhering to different international conventions on maintenance enforcement.

Consideration to amend jurisdictional legislation could be given to allow for a reciprocal recognition of garnishment process. This could significantly speed enforcement.

#### **5. A commitment to improved federal enforcement services.**

The federal enforcement service could review its locating information in order to see if better identifying data is available and how it might be shared with the provinces and territories. On-line access by all provincial and territorial programs to the federal enforcement service (FOAEA Unit) could also improve the speed and cost with which identifying information is provided.

One of the major problems with identifying data is that a name and even a date of birth are rarely sufficient. Enforcement programs do not have the staff to verify multiple possible leads. Consideration could be given to the addition of a social insurance number on any support application to improve the accuracy of identifying data.

A complete review of the efficiency of the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act could be undertaken as well as a broad examination of other alternatives to assist provinces and territories in enforcing support orders.

#### **6. A commitment to improved provincial and territorial enforcement services.**

Many provincial and territorial services are already looking for cost effective ways to operate their programs. Automatic wage withholding, where employers are required by provincial legislation to withhold the amount of the support order and then send the amount to the provincial enforcement service, is one important model to consider. Such a system removes all discretion from the support debtor to fulfil his obligations.



Other types of remedies however, are also being considered. Some jurisdictions have passed legislation which would provide for the removal of a drivers' license for failure to pay support and others are considering it. Consideration is also being given to the removal of trade and professional licenses which is currently being done in some American states. Other possible measures include the attachment of joint bank accounts and business and partnership income. While often criticized as being somewhat draconian, such remedies do reach those persons who successfully manage to hide income.

The linkage of provincial and territorial computer systems, which is presently being considered, could also help reduce delays and costs.

**7. A public awareness campaign to change attitudes and encourage non-custodial parents to take responsibility for their children.**

Some provinces already have campaigns involving posters and television ads which are directed at preventing defaults rather than simply reacting after the fact. As well, the current Federal Enforcement Fund makes money available for this purpose. Government could assess the potential benefit of a national campaign aimed at changing attitudes of those who default. For example, the campaign could promote the fact that payment of child support is a true right of every Canadian child.



**APPENDIX "E"**

**FEDERAL/PROVINCIAL/TERRITORIAL FAMILY LAW  
COMMITTEE'S WORKING PAPER ON THE TAX  
IMPLICATIONS OF CHILD SUPPORT**

**JUNE, 1994**





## WORKING PAPER ON TAXATION OF CHILD SUPPORT

The Federal/Provincial/Territorial Family Law Committee is a Committee of officials engaged in the development of policy in the area of family law.

Since 1990, the Federal/Provincial/Territorial Family Law Committee has been examining the issue of child support upon family breakdown. The Committee has consulted widely on this issue and will shortly be presenting its final report to Deputy Ministers of Justice.

In light of the Thibaudeau decision the Committee felt it timely to produce in advance of its full report, a Working Paper which outlines the Committee's review of the tax treatment of child support.

It should be noted that this Working Paper reflects the views of the majority of Committee members only and not the views of their departments or their governments.

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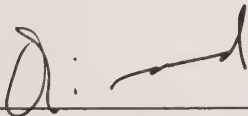
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A handwritten signature in black ink, appearing to be 'G. Rivard', written over a horizontal line.

Chairman of the Committee



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**FEDERAL/PROVINCIAL/TERRITORIAL  
FAMILY LAW COMMITTEE**

**WORKING PAPER ON THE TAX TREATMENT OF CHILD SUPPORT PAYMENTS**

**1. THE ISSUE IN CONTEXT**

Since 1990, the Federal/Provincial/Territorial Family Law Committee has been examining the general issue of child support, including taxation.

On May 3, 1994, the Federal Court of Appeal rendered its judgment in the case of Thibaudeau v. Her Majesty the Queen. The Court has determined that paragraph 56(1)(b) of the Income Tax Act, which requires Ms. Thibaudeau to include the child support award in her income, violates her rights under section 15 of the Charter of Rights and Freedoms.

The Court ruled that the Income Tax Act provision created a distinction for separated custodial parents and that this distinction was discriminatory because it created an inequality on the ground of family status. The majority refused to save the infringing provision under section 1 of the Charter, concluding that the family law system did not correct the inequality created by the tax inclusion and that, even if it could, it was not legitimate to expect the family law system to do so.

This decision of the Federal Court of Appeal has drawn attention to the taxation element of child support payments. However, the Committee recognizes that there are many problems respecting child support that are contributing to income inadequacy in many separated and divorced families. Taxation is only one feature. Low and inconsistent child support awards are also key problems that are being examined by the Committee. The full report of the Committee with recommendations is currently being finalized.

This working paper has been prepared in advance of the Committee's full report on child support because of the government's willingness to consider tax changes. This working paper outlines the Committee's review of the tax treatment of child support, describes and assesses the current tax system, and explores the tax policy options.

**2. DESCRIPTION OF THE CURRENT TAX SYSTEM**

Paragraphs 56(1)(b),(c) of the Income Tax Act provide that child support must be included in the income of the custodial parent, who is then taxed on the total amount of child support and other income. On the other hand, paragraphs 60(b) and (c) of the Income Tax Act grant a deduction to payers of eligible child support payments. Custodial parents do not receive a similar deduction for their share of the children's costs but are entitled to claim certain benefits relating to the children that are not available to the non-custodial parent. The benefits that are available only to custodial parents include: the child care expense deduction, the equivalent-to-married credit (if the parent is not remarried or living in a common law relationship), and the child tax benefit (a refundable tax credit). Another tax

credit the Goods and Services Tax credit (GST credit) is available to all low and middle income families including non-custodial parents.

### **3. ASSESSMENT OF THE CURRENT TAX TREATMENT OF CHILD SUPPORT**

All legislation must conform to the Canadian Charter of Rights and Freedoms, and in this respect it should be noted that while this section of the Working Paper attempts to analyze and assess the deduction/inclusion system, the constitutional aspect of the current tax treatment is not reviewed. The Committee recognizes that this area is unsettled. The decision of the federal Court of Appeal in Thibaudeau ruled invalid under the Charter the requirement that the parent who has custody of a child include child support payments as income. The decision, however, did not deal with the deductibility of child support by the payer.

The federal government has decided to appeal the decision of the Federal Court of Appeal to clarify both the tax rules respecting child support and the interpretation of the Charter.

#### **3.1 ADVANTAGES OF THE CURRENT TAX TREATMENT**

##### **3.1.1 Conformity with the Principle of Individual Taxation**

The current tax provisions treat separated and divorced parents as separate family units. This is because after separation or divorce, even where there is an obligation for the non-custodial parent to continue to support the children, there is no longer a pooling of resources between the two parents. This principle of individual taxation is reflected not only in the deduction/inclusion provisions but also in the calculation of the benefits noted above. The amounts of the child tax benefit and GST credit, for example, are based on the income (including the amount of child support) of the custodial parent alone.

##### **3.1.2 Horizontal Equity**

The current tax treatment of child support aims to reflect the principle of horizontal equity. According to this principle, different taxpayers who are in similar circumstances before taxes should find themselves in similar circumstances after having paid their taxes (i.e. have the same discretionary income and enjoy the same benefits). For example, taxpayers with the same total incomes and family responsibilities should pay the same amount of tax whether the income is received as salary or child support.

Consider, for example, two single parent families with different income sources:

- Each family consists of one parent and one child
- Family A has salary income of \$30,000
- Family B has salary income of \$20,000 plus child support payments of \$10,000.



Each family has the same income available before taxes<sup>1</sup>. Horizontal equity requires that both families be in the same position after having paid their taxes and that both families receive identical benefits (i.e. Child Tax Benefit payments, equivalent-to-married credits, child care deduction, GST credits, etc). The inclusion of child support in the custodial parent's income recognizes that the child support payment finances spending in the custodial parent's household. If child support payments were not taxed in the hand of the recipient, Family A would be taxed more than Family B.

Furthermore, because Child Tax Benefits, GST credits and other deductions and credits are calculated according to income, the current tax treatment ensures that a single parent receiving child support payments receives the same refundable tax credits as another single-parent with the same gross income but without support payments and occurs because the tax reduction to the payor exceeds the tax increase to the recipient.

### **3.1.3 Incentive to Pay**

The deductibility of child support payments recognizes the payer's reduced ability to pay tax relative to someone with the same total income but with no child support obligations. Allowing support payments to be tax deductible by the payer should provide an incentive for the payer to make the payments.

### **3.1.4 Maximizing ability to Pay**

The current deduction provision can enable some individuals, particularly those in middle and low income situations, to pay higher child support than they might otherwise have the capacity to provide. The deduction provides the payor with additional disposable income from which to pay support. Without a tax deduction, because support would be calculated on the basis of net rather than gross income, the quantum of support paid might be lower.

### **3.1.5. Government Subsidy**

An important feature of the current tax treatment of child support payments is that it can result in significantly less overall taxes actually being paid by separated or divorced families than would be the case if payments were neither deductible for the payer nor taxed in the hands of the recipient. This leads to potentially more funds available for the support of children. The subsidy allows the payor an increased capacity to pay child support. In effect, some of the costs of child support are being borne by governments rather than the families. It is estimated that the cost of lower taxes to governments is approximately \$300,000,000 (hereinafter referred to as \$300 M). It should be noted that this tax subsidy only arises when the non-custodial parent is taxed at a higher rate than the custodial parent and occurs because

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<sup>1</sup> It should be noted that the child support payments to Family B enable them to live at the same level as Family A although custodial parent B's earnings are significantly lower than A's.

a dollar of support payment gives rise to a greater tax reduction to the payer than tax increase to the recipient<sup>2</sup>.

### 3.2 DISADVANTAGES OF THE CURRENT TAXATION SYSTEM

#### 3.2.1 Conflict between family law principles and tax rules

The majority judgment of the Federal Court of Appeal in the Thibaudeau case noted concerns regarding the legitimacy of using the family law system to offset the impact of the Income Tax Act. The majority of the members of the Family Law Committee share this concern.

Child support is a creation of family law. It is based on the legal principle that obligations should be imposed on both divorcing parents to financially support their children following family breakdown.

Child support obligations are established pursuant to either a court order or private agreement. Originally, common law did not require that separated spouses support the children of their marriage. Now, both parents are required to provide for the needs of their children in accordance with their means under all family law legislation in Canada. For example, the Divorce Act provides in subsection 15(8):

An order made under this section that provides for the support of a child of the marriage should:

- (a) recognize that the spouses have a joint financial obligation to maintain the child; and
- (b) apportion that obligation between the spouses according to their relative abilities to contribute to the performance of the obligation.

The problem is that in family law child support is a type of intra-family payment made by the non-custodial parent to the custodial parent for the benefit of the child. However, the Income Tax Act treats periodic child support payments as income in the hands of the custodial parent even though other payments to the custodial parent and similar payments where other persons have custody of the children are not treated as income. The result is a situation where one parent appears to be paying the taxes on the other parent's share of their children's costs. Non-custodial parents receive a tax break for their share of the children's costs but there is no similar recognition to custodial parents for their own share of the children's costs.

It is true that custodial parents are eligible for other tax benefits, but the system is often criticized for providing more relief to non-custodial parents than it does to custodial parents,

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<sup>2</sup> According to a Department of Finance analysis of the Department of Justice data base on current levels of child support, it is estimated that the combined federal plus provincial taxes of the separated couple are in fact lowered in approximately 59% of cases (mostly when the custodial parent's income is below \$20,000). For approximately 37% of separated families in this data base, higher overall taxes are paid. In 4% of the cases the current tax treatment is neutral in its effect (no advantage - no disadvantage).



who are most often worse off following family breakdown. The tax benefits available to the custodial parent are "capped", whereas the deduction available to non-custodial parents is proportional to actual child support paid.

There are other significant conflicts between family law and tax law. Family law is a discretionary system whereas the tax law is mandatory. Accordingly, there will always be problems in trying to deliver precise results in a system that is based on discretion. Moreover, whereas the Income Tax Act applies uniformly in all jurisdictions, since child support is determined under both federal and provincial legislation, thirteen different jurisdictions must find ways to address this issue.

### 3.2.2 Concerns regarding the Gross-up:

The conflicts noted above were recognized by family courts which addressed the issue by attempting to consider the tax treatment when determining the quantum of the support order. This is referred to as the "gross-up". The need for a gross-up only arises because of the current deduction/inclusion provisions of the Income Tax Act.

Caselaw indicates that the custodial parent should be compensated for the tax impact of including the child support award within his/her income<sup>3</sup> and that failure to calculate a gross-up constitutes a ground for appeal. However, the gross-up amount is not always clearly identified, but rather included within the total award. As a result, it can be very difficult to determine if or how it was calculated. Also, doing tax calculations can add to the expense of family law cases, often for parties who can least afford it.

There is also evidence that gross-ups are not being effected in all cases and that even where they are, they may not be properly calculated. The method for grossing-up an award to take account of the tax treatment is complex. Although there are computer programs developed for the legal community to assist them in this exercise, they may not take all factors into account and they are not easily accessible to the general public who may be determining their child support payment without expert advice.

Technically, for a proper gross-up to be effected, two complex calculations must be made:

- 1) a calculation of the taxes owed by the recipient on the support payment itself, and
- 2) a determination of the additional taxes owed as a result of including the grossed-up amount in the total income.

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<sup>3</sup> Fitzgerald v. Fitzgerald, 36 R.F.L.(3d) 354 (Alta. Q.B.); DiMarco v. DiMarco, 41 R.F.L.(3d) 235 (Ont. Gen. Div.); Murray v. Murray, 35 R.F.L. (3d) 449 (Alta. Q.B.); James v. James, 41 R.F.L. (3d) 70 (B.C.C.A.); Arshinoff v. Arshinoff, [1993] W.D.F.L., Issue 35, Aug. 30 1993, para 1160 (Ont. Gen. Div.); Dumas v. Dumas, 42 R.F.L. (3d) 261 (Alta.Q.B.).



These calculations, properly done, only ensure that custodial parents are fully compensated for the tax consequences of including the non-custodial parent's share of the children's needs in their income.

A different calculation would be required to ensure that children actually benefit from the subsidy offered by the government to non-custodial parents through the Income Tax Act. For this to happen the intended total subsidy to non-custodial parents would have to be determined in each particular case and be totally passed on to the custodial parents within the child support award. Unless this is done, it is only the non-custodial parent who receives a benefit from this system.

Given the concerns that these calculations may not be properly effected, it is quite possible that the benefit of the subsidy is not currently being passed on to children but remains in the hands of the non-custodial parent.

### **3.2.3 The impact of tax consequences on award determinations**

The current Income Tax Act attaches significant tax implications to child support payments, which apply to both judicial awards (whether made under federal or provincial law) and private agreements.

The impact of this can be summarized as follows:

- It is often very unclear which portion of the award is for taxes and which portion is for the child. Where child support is determined by agreement between parties, it is even unclear whether tax implications have been accounted for at all.
- If tax consequences are properly taken into account and a proper gross-up calculated, the amount of taxes can be as high as the amount for the child's needs. This combination of high taxes and high amounts required to cover children's needs can result in what is referred to as the "glass ceiling problem", which may result in a lower child support award. The concern is that when considering ability to pay, the courts may develop a ceiling on the combined amount of the award and taxes beyond which they will not go. The suggestion is that a grossed-up amount may be deemed to be too high or too burdensome to the payer with the result that the amount of child support ultimately awarded, rather than reflecting need, is a rough figure calculated to fit within a ceiling.
- The benefit of income splitting is lost when both parents have similar earnings or where the custodial parent earns more than the non-custodial parent. In these situations higher overall taxes are paid than if the family had remained intact<sup>4</sup>.

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<sup>4</sup> As indicated earlier, according to an analysis of the Department of Justice's Current Awards Data Base there is no opportunity for income splitting in approximately 37% of separated families. It should be noted, however, that another analysis by the Department of Finance attempted to match separated couples. The results of this study suggest that the percentage of separated couples who would pay higher overall taxes could be as low as 16%.

### 3.2.4 The public perception of unfairness:

The Committee conducted a public consultation on child support, which lasted eighteen months. The majority of the submissions received during this consultation process specifically addressed the issue of the taxation of child support payments, and often it was the only issue discussed.

As with most types of public consultations, the results are not scientific, nor do they necessarily represent the views of the majority of Canadians. Those who are not concerned with the current system may not have felt the need to respond as much as those who were troubled by it. However, organizations speaking on behalf of the general public such as national and provincial Bar Associations, and bodies such as the Ontario Fair Tax Commission and the Conseil de la Famille du Québec, have recommended that changes be made to the taxation system in the way it treats child support.

The results of the consultation indicate that the current tax treatment of child support has created a public perception of inequity that is complicated by gender considerations and the fact that the money at issue is supposed to support children.

More specifically, the following concerns were raised in the public consultation:

- Many of the submissions criticized the tax system for treating money received as child support in the same manner as other "income". The argument is that child support is not income to the custodial parent in the typical sense and should not be taxed as such. Moreover, not all money that helps support a child is deemed to be income.
- The tax subsidy that arises when the custodial parent is taxed at a lower rate than the non-custodial parent is not perceived by custodial parents as a benefit to them or their children. Only the support payer claiming the deduction directly receives the benefit and neither the Income Tax Act nor family law legislation ensures that this benefit is passed on to them.
- It is perceived as unfair that it is the non-custodial parent who is allowed to claim a benefit through the tax deduction while the custodial parent, who lives with the child and who is directly responsible for the child's expenses, receives no deduction benefit and indeed has to pay taxes. In addition, statistics indicate that custodial parents, most of who are women, generally live with the child(ren) at a lower standard of living than non-custodial parents, most of whom are men. The presence of this gender element exacerbates the perception of inequity.
- Intact families object to the fact that it is only separated families who receive a deduction for a share of the children's costs.
- The responsibility for paying the tax is perceived by the custodial parent as being an unfair burden. Under the current system, the onus is on the custodial parent to set aside the money needed at the end of the tax year to pay the tax liability on the full amount of the child support payment. Custodial parents complain that they are often

unaware of the precise amount that they must save. For many custodial parents living on limited incomes, the entire amount of child support, even if it includes a gross-up amount that is supposed to compensate for tax, is often spent on basic expenses related to their children, such as food and clothing.

- Child support awards have to be redetermined yearly to accurately reflect the parties' changing tax implications. There are complaints that custodial parents often do not have the financial means to do this and that it is unclear whether changing tax implications would qualify as a significant change in circumstances required to vary an award.
- The need for a "gross-up" only arises because of the deduction/inclusion provisions of the Income Tax Act and there are complaints that the obligation to gross-up is not fully understood and that the calculations are not being applied consistently or correctly.
- Allowing payers a deduction has not encouraged them to pay. There is still a high rate of default in Canada.

## **4. EXPLORING OPTIONS FOR REFORM**

### **4.1 GUIDING PRINCIPLES**

In exploring options for tax reform in this area, the Committee has identified the following objectives, that it feels, should guide the development of future tax policy:

- The value of the current tax subsidy which makes more money available for the support of children (estimated at \$300 M) should be preserved.
- This tax subsidy should be more effectively delivered to children.
- If child support is taxed, the taxation system should recognize the interests of children in need.
- If child support is taxed, the tax treatment of child support should be simple and understandable and be perceived as being fair and equitable.
- The tax treatment of child support should not conflict with the family law concept of child support as a payment from one parent to the other for the benefit of their children.

Using these objectives as a guide, the Committee has considered four general tax reform approaches:

1. Maintaining the deduction and eliminating the inclusion;



2. Identifying improvements that can be made within the existing deduction/inclusion model;
3. Eliminating the deduction/inclusion regime but preserving the value of the subsidy.
4. Adopting an elective system.

## **4.2 MAINTAINING THE DEDUCTION WHILE ELIMINATING THE INCLUSION**

This is effectively the situation created by the decision of the Federal Court of Appeal in Thibaudeau. The court ruled invalid the requirement that the custodial parent include child support in income. The decision, however, did not deal with the deductibility of child support by the payer and thus the effect is that neither the payer nor the recipient would pay taxes on the support payments.

The Committee recognizes that, given the current fiscal context, this is an unrealistic option as it would significantly increase government subsidization of divorced or separated families regardless of their financial circumstances. This would create a further inequity in the treatment of intact and non-intact families.

## **4.3 IDENTIFYING IMPROVEMENTS THAT CAN BE MADE WITHIN THE EXISTING DEDUCTION/INCLUSION MODEL**

Maintaining the deduction/inclusion system would preserve the income splitting tax benefit which potentially makes more money available for the support of the children. However, as noted above, problems with the current tax treatment have been identified including the major problem that neither the Income Tax Act nor family law legislation ensures that this potential benefit is passed to the custodial parent for the children. The Committee has explored the following two methods to improve the operation of the deduction/inclusion system:

### **4.3.1 The development of a child support formula**

The Family Law Committee recognizes the potential of a child support formula to address many of the problems associated with the deduction/inclusion system.

Since 1990, the Family Law Committee has been examining the major problems relating to child support, including the inconsistency of the awards and the inadequacy of the amounts, and searching for solutions. Most recently, the focus has been on developing a child support formula. A great deal of consideration has been given to ensuring that a child support formula responds to the concerns that have been identified about the current tax implications.

The Committee is currently developing a formula that:

- ensures to a large extent that the full tax benefit to non-custodial parents resulting from the deduction/inclusion policy is, depending on the income of the custodial parent, passed on to the custodial parent through the child support award.

- eliminates the current need for complex tax calculations to determine the gross-ups, because the tax implications would be an inherent part of the formula.
- provides custodial parents, through the use of specific tables, with an estimate of the tax implications that will result from receiving child support.
- ensures that custodial parents in a lower income tax bracket than non-custodial parents benefit from the current tax system.
- is expected to produce significant increases in child support levels, where non-custodial parents earn over \$30,000 a year<sup>5</sup>. The tax subsidy and resulting cost to the government, currently estimated at approximately 300 M dollars a year, is therefore likely to increase as well.

Not all of the problems associated with the current tax treatment would be resolved by the use of a child support formula with the above noted features. Some of the shortcomings are noted below:

- The Supreme Court of Canada may determine, as did the Federal Court of Appeal, that maintaining an inclusion rule in the tax treatment is unconstitutional.
- The deduction/inclusion system being preserved, custodial parents would continue to include the award in their income for tax purposes and non-custodial parents would continue to be allowed a deduction. Thus, the problems associated with treating child support as "income" in the hands of custodial parents would remain.
- The formula may not fully compensate custodial parents in the same income tax bracket or in a higher income tax bracket than non-custodial parents for their tax implications.
- The formula cannot solve the problem for the significant minority of separated families who pay higher overall taxes than if they had remained an intact family.
- Custodial parents with insufficient resources to cover the basic needs of their children would continue to have to save a portion of their child support awards for taxes.
- Regular updates of both the formula and the tables would have to be effected because of tax considerations. Custodial parents would have to be informed of any change in their tax liability, thus creating administrative difficulties for governments.
- As the formula is likely to increase awards substantially, the cost of the government subsidy would presumably increase as well.

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<sup>5</sup> This expectation is based on preliminary comparisons with the Current Awards Data Base.

- Finally, since the level of the subsidy offered by the government is determined by the level of the award, it may be that families with high income payers actually receive higher subsidies than families with low income payers.

#### **4.3.2 Consider shifting the responsibility to pay the tax**

This option has been identified by the Committee as a possible way to address the real and perceptual problems associated with making the custodial parents pay the taxes.

It would involve exploring further with the Department of Finance, the possibility of making non-custodial parents responsible for paying the taxes on the child support award at the lower of the parties' tax rates. The objective would be to accomplish this within a system that continues to allow the benefits of income splitting, which potentially makes more money available for the support of children. Ideally, this option could be developed in conjunction with a child support formula. The tax consequences of the award would also have to be identified more clearly, perhaps through the use of separate income tax tables.

This option would retain the advantages of income splitting, continue to maximize the ability of low and middle income payers to pay support, allow custodial parents to fully utilize all support payments received for the benefit of their children, and ensure that parties not pay more taxes than they did before the breakup.

### **4.4 ELIMINATING THE DEDUCTION/INCLUSION PROVISIONS**

The Committee recognizes that there are both advantages and disadvantages to eliminating the deduction/inclusion provisions. The implications of doing so are broader than just the effect on family law and also involve social policy considerations. The advantages and disadvantages are set out below:

#### **4.4.1 Advantages of eliminating the deduction/inclusion provisions:**

Eliminating the deduction/inclusion provisions would eliminate the problems identified earlier that are associated with this tax treatment.

Most particularly, this approach would directly respond to the perception, particularly among custodial parents, that the tax treatment of child support awards is unfair and inequitable because the problems associated with treating child support as "income" would be eliminated. In addition, there would no longer be a need for "gross-up" calculations and the risk of paying higher overall taxes upon divorce would be eliminated.

#### **4.4.2 Disadvantages of eliminating the deduction/inclusion provisions:**

##### **Reduced Capacity to Pay**

In some cases the current deduction/inclusion system enables some individuals in middle and low income situations to pay higher child support than they might otherwise have the capacity to provide. Eliminating the deduction would mean that these middle and low



income payors would have a reduced capacity to pay child support, and since support would be calculated on net rather than gross income, in many cases the quantum of awards would be reduced as a result.

### **Loss of the current subsidy:**

Since there is an income splitting benefit under the current deduction/inclusion system (where the non-custodial parent is taxed at a higher rate than the custodial parent), elimination of the deduction/inclusion of child support payments would thus reduce the potential resources available for child support in these cases. This potential loss of the current income splitting benefit is a concern since the benefit appears to apply to at least 59% of families at a cost of approximately \$300 M for the government.

If the deduction/inclusion scheme is eliminated, it is the view of the Committee that it must be a priority to ensure that the \$300 M subsidy be re-targeted and distributed to children in another, preferably more effective manner.

### **Loss of other benefits:**

The current tax provisions treat separated and divorced parents as separate family units. Eliminating the deduction/inclusion mechanism would raise the issue of whether they should continue to be treated as separate family units for purposes of child support. The Department of Finance has suggested that continuing to treat the non-custodial parent as a continuing member of the family unit would call into question the rationale for allowing the custodial parent to claim the equivalent-to-married credit and basing the amounts of the Child Tax Benefit and Goods Services Tax Credit on the income of the custodial parent alone. While it might create an inconsistency, an argument can be made that taxation of support payments could and should be treated as a different issue altogether from the determination of a family's eligibility to benefits. In the recent Thibaudeau case, both the Tax Court of Canada and the Federal Court of Appeal recognized that these benefits can be treated separately from the deduction/inclusion provisions. The government could adopt a no deduction/no inclusion tax policy, but in determining whether or not a family qualifies for other benefits, recognize the fact that these families are separated and consider each household's situation, including payment and receipt of child support, before allowing a benefit.

### **Administrative complexity:**

A change in the tax treatment of support payments could represent increased administrative complexity for Revenue Canada which would have to administer a dual system: one for existing orders and one for new orders.

To limit the number of variation applications, it may be preferable that any proposed change to a no deduction/no inclusion system only be made applicable to new support orders or agreements. However, any modifications to the tax system combined with the introduction of a child support formula, which would generally increase the value of existing awards,

would generate significant increases in variation applications for existing awards. Therefore, Revenue Canada may not have to maintain a dual system for very long.

### **Encumbering the courts with an excessive number of variation applications:**

A change in the tax treatment of child support combined with the introduction of a child support formula could mean a significant burden on the courts, which could face a major increase in variation applications.

Although the courts may face a significant increase in variation applications, the introduction of a child support formula would provide guidance to the parties, the lawyers and the judges as to appropriate levels of child support. The formula could, therefore, encourage out of court settlements and ultimately limit the parties' legal costs. It is also possible that a child support formula and a new tax system would lead to a balancing out of awards and limit the number of variation applications.

## **4.5 IDENTIFYING WAYS TO PRESERVE THE VALUE OF THE SUBSIDY:**

As noted above, if the deduction/inclusion scheme is eliminated, the Committee considers it a priority to ensure that the \$300 M subsidy be re-targeted and distributed to children in another, more effective manner. In this respect, reference should be made to the guiding principles outlined in section 4.1 of this Working Paper. More specifically, with respect to distributing the subsidy, the government should ensure that:

- the value of the current subsidy is preserved;
- the subsidy is directed at children in need
- the tax treatment is simple and understandable; and
- the benefit is effectively delivered to children.

The Committee has identified three possible ways to preserve the value of the subsidy:

- enhancement of the basic Child Tax Credit to all low income families
- increasing the Equivalent to Married Credit
- creating a new credit system for children of separated and divorced families.

A preliminary outline of these options is set out below with the suggestion that they be explored further.

### **4.5.1 Enhancement of the basic Child Tax Credit to all low income families**

- This would assist all low income Canadian children notwithstanding whether they live in single, separated, divorced or intact families.
- The actual enhancement of the benefit to children may not be significant given the high number of children to which it would apply. A preliminary and rough analysis

by the Department of Finance suggests that it may represent \$52 per child. The current average basic Child Tax Credit is \$1020.

#### **4.5.2 Increasing the Equivalent-to-Married Credit**

- This would benefit all children of single parent families whether never married, widowed, separated, or divorced. This benefit would not be income based and could in fact, assist children living with high income earning custodial parents. The benefit would not assist children, even low income children, whose custodial parent has entered into a new relationship.

#### **4.5.3 Creating a new credit for children of separated and divorced families**

- The objective of this approach is to preserve the value of the current deduction/inclusion subsidy through the creation of a tax credit that would be designed to specifically benefit children of separated and divorced families. To increase the value of the benefit, consideration could be given to targeting only children of low income custodial parents.
- It is important that the credit be designed to benefit the children as directly as possible. However, it should be recognized that in low income categories, the loss of the current tax deduction may impede dramatically the payer's capacity to pay support. For this reason, a credit to low income non-custodial parents could also be examined.
- The government is currently reviewing Canada's social security programs. In the event this results in modifying benefits to families, any alternative benefit would have to be examined for its appropriateness as a "carrier" of the value of the deduction/inclusion system.

### **4.6 ELECTIVE SYSTEM**

An elective system could allow parents to jointly choose either the deduction/inclusion (the present) system or a no inclusion/no deduction option. It would have the advantage of maintaining, for those who want it, the income splitting benefit that the current system provides, while allowing those who are penalized by the system to opt-out.

Under the current system, where child support orders are determined by judicial discretion with very little guidance on appropriate levels of child support, this is an interesting option. However, in the context of a child support formula, where child support is established based on parental means and number of children, this approach is unsuitable.

It would force the government to adopt two formulas: one with tax consequences and one without. Parties would then have to apply the two formulae in all cases, then jointly agree to elect one of the two. Because such an approach continues to offer non-custodial parents an important tax subsidy, it is easy to predict that negotiations, abuse of power, litigation and



high legal costs over child support determinations would remain as important as they currently are. This option would basically defeat two objectives of a child support formula: simplicity and reduced disputes and litigation.

As well, with an elective system, parents would have to re-assess, every year, the effect of the tax system on their child support order and determine whether or not to seek a variation to take into account changed tax consequences.

This option would presumably also create administrative complexities for Revenue Canada which would, forever, be forced to maintain a dual system. The ultimate cost to the government may also well become more significant than it currently is because couples could structure their support payments to minimize their tax liability.

## 5. CONCLUSIONS

**5.1** Through this Working Paper the Family Law Committee has attempted to assess the current tax system, to develop ways of improving it and to explore other possible tax options.

**5.2** Both the advantages and disadvantages of the current deduction/inclusion system are outlined.

**5.3** The Committee has also identified the following objectives that should guide the development of future tax policy:

- The value of the current tax subsidy which makes more money available for the support of children (estimated at \$300 M) should be preserved.
- This tax subsidy should be more effectively delivered to children.
- The taxation system should recognize the interests of children in need.
- The tax treatment of child support should be perceived as being fair and equitable.
- The tax treatment of child support should be simple and understandable.
- The tax treatment of child support should not conflict with the family law concept of child support as a payment from one parent to the other for the benefit of their children.

**5.4** Using these objectives as a guide, the Committee has considered four general tax reform approaches. These approaches are:

1. Maintaining the deduction while eliminating the inclusion.

2. Identifying improvements that can be made within the existing deduction/inclusion model.
3. Identifying alternatives to the deduction/inclusion regime.
4. Adopting an elective system.

**5.5** The Committee does not recommend pursuing further the first option of maintaining the deduction and eliminating the inclusion.

**5.6** Similarly, the Committee does not recommend the fourth option of adopting an elective system. It would be very difficult to administer and would defeat two of the purposes of introducing a child support formula: simplicity and reduced disputes and litigation.

**5.7** The Committee recommends that two options be further examined:

1) improvements to the existing deduction/inclusion system with the introduction of a child support formula and the possibility of shifting the responsibility to pay the taxes to the support payer at the lower of the two parents' rates.

2) changing the system to a no deduction / no inclusion system combined with preserving the value of the \$300 M subsidy and targeting it to children.

**5.8** Maintaining the deduction/inclusion system would preserve the potential income splitting tax benefit which, in 59% of cases, can make more money available for the support of the children.

**5.9** Having the taxes paid by the paying parent would solve the equity concerns associated with requiring the custodial parent to pay taxes.

**5.10** The Family Law Committee recognizes the potential of a child support formula to address the current problem, that neither the Income Tax Act nor family law ensures that the tax subsidy, when it arises, is passed to the custodial parent for the children.

**5.11** The Committee recognizes that the most severe limitation of a child support formula in addressing the tax issue is that it cannot resolve the problem for the significant minority of parents who pay higher overall taxes than if there was a no deduction/no inclusion system.

**5.12** The Committee considers that the tax treatment of child support should not generate higher overall taxes for separated families than if there was a no deduction/no inclusion system.

**5.13** The Committee considers that eliminating the deduction/inclusion provisions would solve all the concerns raised with this system and in particular that of the perception of inequity.

- 5.14** The Committee's recommendation of eliminating the deduction/inclusion provisions is made in the context of maintaining the value of the current subsidy and passing it on to children who need it.
- 5.15** The Committee has identified three possible ways to pass on this subsidy to children and recommends that they be explored further. The three options are:
- enhancement of the basic Child Tax Benefit to all low income families;
  - increasing the Equivalent to Married Credit;
  - creating a new credit or benefit for children of separated and divorced families.
- 5.16** The Committee also recommends that the introduction of new taxation provisions be timed to coincide with the introduction of a child support formula, to limit the confusion, cost, and complexity encountered by the public, government, and the courts in dealing with changes to the current law.







